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## Racial Segregation in West Virginia Housing, 1929-1971

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## RACIAL SEGREGATION IN WEST VIRGINIA HOUSING, 1929–1971

*Nathan Tauger\**

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### I. INTRODUCTION

In the 33rd Volume of the *West Virginia Law Review*, George D. Hott wrote that “[c]ommingling of the homes and places of abode of white men and black men gives unnecessary provocation for miscegenation, race riots, lynchings, and other forms of social malaise, existent when a child-like,

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undisciplined, inferior race is living in close contact with a people of more mature civilization.”<sup>1</sup> His article argued that governments should use tools like zoning to resolve emergent problems in urban life, including, in his view, race mixing. He lived to see government, guided by the real estate industry and white supremacist political forces, entrench residential segregation across the state.

This Article examines the legal tools used to build housing segregation in West Virginia and the legal and popular efforts to challenge it. The widespread adoption of racial restrictive covenants in the state and the National Association for the Advancement of Colored People’s (“NAACP”) attempt to overrule them in the 1929 Supreme Court of Appeals of West Virginia case *White v. White*<sup>2</sup> shows the state’s tacit acceptance of the early-twentieth-century real estate industry’s racist logic. New Deal programs like the Home Owners’ Loan Corporation, Federal Housing Administration, Subsistence Homestead Program, and Public Housing Administration show how the Federal Government’s entry into housing provision accepted racial segregation in housing, blocked Black access to the programs that made widespread white homeownership viable, and, at times, exacerbated or introduced segregation to places where it was not present before.<sup>3</sup> Even after the Supreme Court of the United States limited use of restrictive covenants in its decisions aggregated as *Shelley v. Kraemer*,<sup>4</sup> the discriminatory practices that created segregation continued. As scholar Keeanga-Yamahatta Taylor writes, during the era of segregation, rather than a “dual market” for housing, “there was a single United States housing market that was defined by its racially discriminatory, tiered access—each tier reinforcing and legitimizing the other.”<sup>5</sup> Property in white neighborhoods derived value from being closed to Black people, while the presence of Black people was enough for whites and the state to perceive a neighborhood as a slum.

While some Black neighborhoods did deteriorate—partly because of the opportunities for economic exploitation made possible by segregation—in others the mere presence of Black people was enough to diminish their value to assessors and policy makers. From the 1940s on, city, state, and federal officials chose to condemn Black neighborhoods when making space for private and public projects. In the 1960s, housing demand caused by relocation, coupled with discrimination and the nationwide civil rights activity, brought about popular resistance to housing discrimination. New and old civil rights groups and organizers fought back against displacement and racist housing policies,

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<sup>1</sup> George D. Hott, *Constitutionality of Municipal Zoning and Segregation Ordinances*, 33 W. VA. L.Q. 332, 348–49 (1927).

<sup>2</sup> 150 S.E. 531 (W. Va. 1929).

<sup>3</sup> See RICHARD ROTHSTEIN, *COLOR OF LAW* 17–39 (2017).

<sup>4</sup> 334 U.S. 1 (1948).

<sup>5</sup> KEEANGA-YAMAHTTA TAYLOR, *RACE FOR PROFIT* 37 (2019).

ultimately winning concessions in the form of changed public housing policies, anti-discrimination laws, and improved public services.

Efforts to invalidate restrictive covenants, secure Black access to public housing programs, pass anti-discrimination laws, and demand equitable treatment in redevelopment programs show that Black people across the state litigated, lobbied, and protested to attack the manifold barriers to decent housing. Anti-discrimination laws represented an important about-face in the state's attitude toward segregation, though they have not fully addressed the harm accumulated by decades of segregation.

## II. BACKGROUND

Due to the state's outsized role in American labor history, many studies of West Virginia's history of segregation and discrimination in the 20th century have focused on industrial employment, the coalfields, and organized labor.<sup>6</sup> Previous works have illuminated housing conditions and the reality of segregation in West Virginia's rural industrial coal economy. Ronald Lewis, in *Black Coal Miners in America*, explored the practices of coal companies in employing a "judicious mixture" of native-born whites, African American migrants from the South, and European immigrants.<sup>7</sup> Mine owners hypothesized that a racially and ethnically diverse workforce would separate on racial and ethnic lines, precluding any labor organizing that might threaten production and profit.<sup>8</sup> Joe Trotter, in *Coal, Class, and Color*, showed that coal companies regularly segregated housing in camps, and when improvements in company housing were made, African American miners and their families were typically the last to benefit.<sup>9</sup> Even in some parts of "the Free State of McDowell" (McDowell County)—where Black miners worked with whites, Black Delegates represented white constituents in the legislature, and Black lawyers practiced law on equal footing with whites—residential segregation persisted into the 1960s.<sup>10</sup>

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<sup>6</sup> See CICERO M. FAIN III, *BLACK HUNTINGTON* (2019); MEMPHIS TENNESSEE GARRISON, MEMPHIS TENNESSEE GARRISON (Ancella R Bickley & Lynda Ann Ewen eds., 2001); RONALD L. LEWIS, *BLACK COAL MINERS IN AMERICA 1780-1980* 121-90 (1987); JOE WILLIAM TROTTER, JR., *COAL, CLASS AND COLOR* (1990). It should be noted that mining jobs brought substantial white ethnic diversity to West Virginia in the early 20th century, but African Americans were the only group that would come to be seen as "non-white" to migrate to the state in large numbers. See *History of Immigration to the Coal Fields of West Virginia*, W. VA. DEP'T ARTS, CULTURE, & HIST., <http://www.wvculture.org/history/government/immigration05.html> (last visited Aug. 28, 2020).

<sup>7</sup> See RONALD L. LEWIS, *BLACK COAL MINERS IN AMERICA 1780-1980* (1987).

<sup>8</sup> See LEWIS, *supra* note 6. See also James L. Laing, *The Negro Miner in West Virginia*, in 14 *SOCIAL FORCES* 416, 416-22 (1936), for a discussion of race relations in early-twentieth-century West Virginia mines.

<sup>9</sup> TROTTER, *supra* note 6, at 129.

<sup>10</sup> *Id.*; Alice E. Carter, *Segregation and Integration in the Appalachian Coalfields: McDowell County Responds to the Brown Decision*, 54 *W. VA. HIST.* 78 (1995).

West Virginia's Constitution mandated school segregation until the *Brown v. Board of Education*<sup>11</sup> decision while remaining silent on other types of segregation.<sup>12</sup> Explored below are some instances in which constitutionally mandated school segregation allowed decision makers to segregate or reject African Americans from housing. The State Constitution's silence on other types of discrimination allowed segregation to continue unabated in the fields of employment, housing, and public accommodation. Chemical companies and other manufacturing plants often refused to hire Black workers. Many coal mines blocked Black workers from the kinds of jobs that would withstand automation in the 1940s and 1950s, prompting Black workers and their families to move to cities.<sup>13</sup>

The coal operators' theory of judicious mixture shaped segregation in West Virginia's small coal towns. Twentieth-century real estate and appraisal professionals' theories of property value shaped segregation in West Virginia's cities.<sup>14</sup> Their theories held that only ethnically homogeneous neighborhoods were stable, that urban neighborhoods inevitably declined as minorities moved into them, and that the only way for a neighborhood to preserve its stability and property value was to maintain rigid segregation. Professional real estate societies set segregation as the standard professional practice. The influential Chicago Real Estate Board encouraged "owners [sic] societies in every white block for the purpose of mutual defense," which restricted any sale to Black people outside of "contiguous blocks" in which Blacks already lived.<sup>15</sup> The National Association of Real Estate Boards ("NAREB") adopted the Chicago branch's code for their agents ("Realtors") nationally.<sup>16</sup>

The language of white racism changed between New Deal America and the post-war period.<sup>17</sup> Racist views in real estate had formed along with other pre-war expressions of white supremacy, like the eugenics movement and racial "quota-based" immigration policies.<sup>18</sup> After World War II, Americans justified the United States' superpower status as earned from defeating tyrannical, racist fascists. This self-image did not cohere well with residential segregation based on claims of innate racial superiority. In 1950, NAREB re-examined the oath it had required Realtors to take since 1928: "[to] never be instrumental in

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<sup>11</sup> 347 U.S. 483 (1954).

<sup>12</sup> Nelson R. Bickley, *Brown v. Board of Education in West Virginia*, 107 W. VA. L. REV. 673, 684 (2005); *see also id.* at 674 (noting the continued presence of a segregation requirement in the West Virginia Constitution into the 1990s).

<sup>13</sup> *See* LEWIS, *supra* note 6.

<sup>14</sup> For an account of racial biases in the appraisal profession, *see* TAYLOR, *supra* note 5, at 147–51.

<sup>15</sup> BERYL SATTER, *FAMILY PROPERTIES* 40 (2009).

<sup>16</sup> *Id.*

<sup>17</sup> DAVID M. P. FREUND, *COLORED PROPERTIES* 19–20, 33 (2007).

<sup>18</sup> *Id.* at 57–59.

introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood.”<sup>19</sup>

But white suburbanites and the real estate industry continued to demand segregation. They used more abstract arguments to demand it, referencing property rights, property values, cultural differences, and neighborhood security. Without ever mentioning race, the Charleston suburb Weberwood defended its whites-only policy solely by mentioning “a good residential neighborhood,” “higher than average resale values,” and “standards.”<sup>20</sup> Between 1950 and 1974, NAREB required Realtors to swear “to not be instrumental in introducing into a neighborhood a character of property or use which will clearly be detrimental to property values in that neighborhood.”<sup>21</sup> The language changed, but the exclusion continued as before.

### III. DISCUSSION

This Article begins by looking at *White v. White*, West Virginia’s first institutional attempt to grapple with housing segregation, in which the state’s NAACP sought to block the enforcement of race-restrictive covenants.<sup>22</sup> The article then examines how real estate practices and New Deal policies encouraged segregated housing in West Virginia through the following decades. The Federal Subsistence Homestead program was not a large source of housing in the state, but its history shows how local and state prejudices could influence the implementation of federal programs, as well as the continued use of race covenants. Next, this Article turns to more influential New Deal programs. Federal mortgage insurance allowed for the growth of all-white neighborhoods in the post-war period, while restricting Black residents’ access to conventional financing outside of all-Black neighborhoods. Public housing in West Virginia was planned to maintain racial segregation in the places it was built. The next sections examine the consequences of residential segregation in the state’s cities. Segregation allowed for severe economic exploitation of renters. Protest movements emerged that challenged both exploitation and segregation. The next section shows how the state’s first municipal anti-discrimination laws were passed after Black protest about displacement by public works, and the last sections examine the legislative history of the state’s anti-discrimination law in

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<sup>19</sup> Jonathan Zasloff, *Between Resistance and Embrace: American Realtors, the Justice Department, and the Uncertain Triumph of the Fair Housing Act, 1968-1978*, 61 *How. L.J.* 69, 94 (2017).

<sup>20</sup> Proposed Agreement Between Weberwood Development Corporation and H.D. Crane (Feb. 13, 1953) (on file with the West Virginia Archives and History Library).

<sup>21</sup> Zasloff, *supra* note 19, at 94-95.

<sup>22</sup> See *White v. White*, 150 S.E. 531 (W. Va. 1929).

housing and its enforcement. The article concludes with a brief analysis on additional policy responses to the enduring problem of residential segregation.

*A. The Race Restrictive Covenant Reaches the Supreme Court of Appeals of West Virginia in White v. White*

The racially restrictive covenant was a legal tool used by developers and property owners to restrict non-white usage and ownership of property. Present across the country in the early 1900s, racially restrictive covenants proliferated following the Supreme Court of the United States' decision in *Buchanan v. Warley*,<sup>23</sup> which held that cities could not explicitly zone neighborhoods as white or Black.<sup>24</sup> The decision left an opening to maintain racial exclusion by insertion of racial restrictive covenants in deeds, which greatly increased the usage of such covenants.<sup>25</sup>

By 1912, racial restrictive covenants were common in Huntington and becoming more common throughout West Virginia.<sup>26</sup> Their presence in advertisements for developments across the state show their marketability. A 1903 pamphlet advertising South Park and other Morgantown neighborhoods noted the surety of white-only restrictions.<sup>27</sup> John Henry Cammack, a devout ex-Confederate and real estate agent, sold property on blocks guaranteed to be white-only on Huntington's south side and Black-only in Washington Place.<sup>28</sup> John Shirley Ross, a Charleston politician and one time State Delegate, inserted in large text, "White People Only" on his advertisements and property maps for the South Charleston residential areas Zimmerman Reserve and Rossdale and for the commercial development of Splash Beach Park.<sup>29</sup> Other residential developments like Luna Park in Charleston, and the Holderby Addition in Huntington, advertised the "intangible assets of racial and other restrictions"<sup>30</sup> and "lots . . . sold only to members of the Caucasian race."<sup>31</sup> Newspapers carried real estate ads that made clear the race of desired applicants, including some with a separate set of listings "Homes for Colored."<sup>32</sup>

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<sup>23</sup> 245 U.S. 60 (1917).

<sup>24</sup> *Id.* at 82. Many cities in the south continued to do this anyway. See N. D. B. CONNOLLY, A WORLD MORE CONCRETE 133–34 (2014); ROTHSTEIN, *supra* note 3, at 46–48.

<sup>25</sup> ROTHSTEIN, *supra* note 3, at 78.

<sup>26</sup> Jacqueline Housel, Construction of a "Colored" Neighborhood: The Shaping of Washington Place, Huntington, West Virginia 1905–1925 17 (Mar. 2002) (unpublished manuscript) (on file with the Cabell County Public library).

<sup>27</sup> J. W. WILES, MORGANTOWN'S SUBURBS 13 (1903).

<sup>28</sup> Housel, *supra* note 26, at 10.

<sup>29</sup> Map of Splash Beach Park, 8 KANAWHA COUNTY MAP BOOK 21.

<sup>30</sup> *For Sale Thru Guthrie & Son*, CHARLESTON DAILY MAIL, Mar. 21, 1926, at 26.

<sup>31</sup> FAIN, *supra* note 6, at 121.

<sup>32</sup> See *Homes for Colored*, CHARLESTON GAZETTE, Feb. 16, 1932, at 22.

Racial restrictive covenants came before the Supreme Court of Appeals of West Virginia in 1929 in *White v. White*.<sup>33</sup> The court's decision to invalidate a race restrictive covenant did not depend on principles of equality before the law. Instead, the court relied on private property rights: in this case, the right of a white owner to sell to Black buyers.<sup>34</sup> The decision in *White v. White* was hailed as a victory for African Americans in the state,<sup>35</sup> but a closer analysis of the decision and conditions in the state shows that the decision also reaffirmed principles key to continued residential segregation.

*White v. White* came about when Lewis White, a railroad worker, and Cora, his wife, decided to buy a house in Huntington.<sup>36</sup> The Whites were Black migrants to the city, originally from Virginia, and they had rented for most of the 1920s, splitting the front of a house on 8th Avenue with two other Black migrants to Huntington who worked as cooks for wealthy white families and the back of the house with an elderly couple who worked as domestic servants.<sup>37</sup> In 1926, they bought a house at 1453 9th Avenue, a block bordered by Primrose Avenue to the north and Pearl Street to the east. The chain of title for the property went back to a subdivision made by Anna Jones and Kate Rau in 1920.<sup>38</sup> All properties in that subdivision contained a racial restrictive covenant: "that the property hereby conveyed shall not be conveyed, demised, devised, leased or rented to any person of Ethiopian race or descent for a period of 50 years from the date hereof."<sup>39</sup>

Despite the covenant, the Honakers, a white couple who owned the house, sold it to the Whites, transferring the property on November 1, 1926.<sup>40</sup>

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<sup>33</sup> 150 S.E. 531 (W. Va. 1929).

<sup>34</sup> FAIN, *supra* note 6, at 121.

<sup>35</sup> *Id.* at 9.

<sup>36</sup> *Id.* at 121; 1930 U.S. CENSUS POPULATION SCHEDULE pt. 20A, 1897 (listing demographic information for residents of West Virginia, Cabell, Huntington Town, 6th Ward, Gideon District).

<sup>37</sup> 1930 U.S. CENSUS POPULATION SCHEDULE pt. 20A, 1897 (listing demographic information for residents of West Virginia, Cabell, Huntington Town, 6th Ward, Gideon District); BUREAU OF NEGRO WELFARE & STATS., BIENNIAL REPORT 1923-1924 54. The Bureau of Negro Welfare and Statistics ("BNWS") was a small state agency that operated from 1921 to 1957, meant to research the conditions of African Americans in the state and advocate for their needs and interests. It was one of the few state agencies (along with the parallel Black Board of Education) that staffed Black people in policy-making positions. The BNWS regularly conducted surveys on the well-being of Black miners, housing and employment conditions, criminal justice, and Black-owned businesses. For more information about the BNWS, see Colin E. Reynolds, *The Rise and Fall of West Virginia's Bureau of Negro Welfare and Statistics, 1921-1957*, 9 W. VA. HIST. 1 (2015).

<sup>38</sup> FAIN, *supra* note 6, at 133.

<sup>39</sup> *White v. White*, 150 S.E. 531, 532 (W. Va. 1929). Racial restrictive covenants were present in Huntington from 1903 on. See FAIN, *supra* note 6, at 121.

<sup>40</sup> *White*, 150 S.E. at 532. There is no affirmative evidence supporting the notion that the Honakers were "straw buyers" (white proxies who would buy then sell to African American true buyers), but the Honakers owned the property for less than a year, suggesting the possibility.



Three months later, one of Lewis and Cora White's neighbors, Harry B. White, who owned an additional six lots in the subdivision, sued Lewis and Cora White for breaking the covenant, as well as the Honakers for making the sale.<sup>41</sup> The Cabell County Circuit Court found the Honakers and the Whites in violation of the covenant.<sup>42</sup> The court declared the Whites' deed invalid, and then served notice for the Whites to move from the property.<sup>43</sup>

The Huntington NAACP employed Charleston attorney T. Gillis Nutter to assist the Whites' lawyer with an appeal to the Supreme Court of Appeals.<sup>44</sup> In September 1929, Nutter and Huntington attorney A. D. Meadows represented the Whites before the State Supreme Court.<sup>45</sup> They employed a variety of arguments, including that the Whites were descendants of slaves, most likely from west Africa, and as such, they were not "Ethiopian" and that "this phrase should be strictly construed against the person attempting to enforce the

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<sup>41</sup> Lawrence N. Jones, *The Civil Status of Negroes in West Virginia as Reflected in Legislative Acts and Judicial Decisions, 1860–1940* 51 (Sept. 1948) (master's dissertation, University of Chicago) (on file with the University of Chicago Library).

<sup>42</sup> *White*, 150 S.E. at 532.

<sup>43</sup> *Id.*

<sup>44</sup> Letter from the Huntington Branch of NAACP to Robert L Vann as read into the Meeting Minutes of the Hunting Branch of the NAACP (Dec. 3, 1929) (on file with author). Nutter, then-President of the State NAACP, was an elite African American voice against segregation. Elected twice to the West Virginia House of Delegates from a predominantly white district, Nutter sponsored, and saw passed, bills that punished lynching and banned the racist film *Birth of a Nation*. Colin E. Reynolds, *The Rise and Fall of West Virginia's Bureau of Negro Welfare and Statistics, 1921–1957*, 9 W. VA. HIST. 1, 5 (2015). As long-time president of the Charleston NAACP, Nutter investigated and effectively stopped Charleston's South Hills Bus Line's "attempt at jimcrowism [sic]" by implementing segregated seating, a reality in other West Virginia cities like Morgantown. Executive Committee Meeting Minutes of the Charleston Branch of the NAACP (Mar. 13, 1927) (on file with the West Virginia and Regional History Center); Executive Committee Meeting Minutes of the Charleston Branch of the NAACP (Sept. 12, 1926) (on file with the West Virginia and Regional History Center). For more information regarding segregation in Morgantown, see Interview by Barbara Howe & George Parkinson with Lillian Majally, in Morgantown, W. Va. (Oct. 17, 1986). He took public action against the Ku Klux Klan pamphleteering in Charleston and secured a partial victory against the Kanawha County Board of Education's attempt to segregate Charleston's public library. Meeting Minutes of the Charleston Branch of the NAACP (Oct. 11, 1927) (on file with the West Virginia and Regional History Center). In addition to litigating civil rights issues, Nutter was a politically active Republican and served as a delegate to national nominating conventions frequently; he owned property and for a time operated the state's only Black-owned bank, The Mutual Savings and Loan Company (it seems to have gone out of business at some point in the 1940s or 50s; Black-owned banks in Chicago and elsewhere faced significant bars to accumulating the capital necessary to lend on the same level as white-owned banks; and they faced bars from using FHA programs until the 1960s. See SATTER, *supra* note 15). Toward the end of his life, Nutter was active in managing the state's transition to integrated schooling. One of the West Virginia NAACP's highest awards bears his name.

<sup>45</sup> *White*, 150 S.E. 531.

covenant.”<sup>46</sup> This argument fell flat.<sup>47</sup> So did the Whites’ attempt to invoke the Fourteenth Amendment, which Judge Maxwell dismissed by citing contemporary Supreme Court of the United States precedent that the Fourteenth Amendment applied only to government actions, not private contracts.<sup>48</sup> Partial victory for the NAACP, Nutter, and the Whites arrived through the presence of the Honakers. In the decision of the court, Judge Maxwell wrote, “[a] fee simple title . . . no longer would import complete dominion in the owner if because of a restriction imposed by his grantor the market afforded by a whole race of the human family is closed.”<sup>49</sup> Or, put more simply, “[t]he right to sell is a badge of ownership,” and any restriction contrary to complete ownership is not valid.<sup>50</sup>

The decision did nothing to undermine the widely held belief that Black people in a neighborhood harmed the quality of life for white residents. The *White* Court took no issue with racially segregated living conditions, comparing the presence of people of color in a white neighborhood to “the operation of a slaughter house [sic] or glue factory.”<sup>51</sup> These noxious operations could be prohibited from a neighborhood legally. Prohibiting the sale of property to someone who just happened to own them, however, was against public policy. Judge Maxwell wrote, “though there may be contractual restrictions intended to preserve separation of races, whereby a member of a designated race may not occupy a designated property for residential purposes, it does not follow that he may not become the owner thereof.”<sup>52</sup> Still, Judge Maxwell’s decision to rule against the covenant was a victory for Lewis and Cora White—according to the 1930 census, they still resided in the house.<sup>53</sup>

The victory in *White v. White* brought a stir to the Huntington and Charleston branches of the NAACP. Nutter reported to the Charleston branch that “copies of the decision have been sent for from practically every section of the country.”<sup>54</sup> Walter White, the Executive Secretary of the NAACP, sent “heartiest congratulations.”<sup>55</sup> The nascent Huntington branch publicized the

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<sup>46</sup> Memorandum of Authorities Submitted with Petition for Appeal and Supersedeas, *White v. White*, 150 S.E. 531 (W. Va. 1929) at 5–6; *see also* Jones, *supra* note 41, at 50.

<sup>47</sup> In *White*, the court stated “[i]n the strictest sense a negro is not an Ethiopian . . . . In popular parlance the distinction is not observed” and further adds that the term was a compliment to African Americans, because “Ethiopian civilization, culture and accomplishment are recorded from early historic periods.” *White*, 150 S.E. at 532.

<sup>48</sup> *Id.* at 534.

<sup>49</sup> *Id.* at 539.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> 1930 U.S. CENSUS POPULATION SCHEDULE, *supra* note 36.

<sup>54</sup> Executive Committee Meeting Minutes of the Charleston Branch of the NAACP (Dec. 6, 1929) (on file with the West Virginia and Regional History Center).

<sup>55</sup> Letter from Walter White to T.G. Nutter (Nov. 13, 1929) (on file with author).

decision to increase membership, and the widely-read Black newspaper, the *Pittsburgh Courier*, carried a story about the case.<sup>56</sup> Writing six years after the case, Thomas E. Posey, an author and economics professor at West Virginia State College, called the decision “quite reasonable and fair . . . it established legal precedent which will protect . . . against segregation and discrimination in the purchasing and ownership of property.”<sup>57</sup> Having won another Supreme Court case against segregation in the Charleston Public Library, Nutter and other Black advocates felt optimistic coming into the 1930s.<sup>58</sup>

Unfortunately, gains won in *White v. White* would be overtaken by forces that would further segregation, devalue Black property, and make Black living conditions worse in the state. Changes in the government’s role in the housing market overshadowed the freedom through property signified by *White*. New Deal housing programs in West Virginia, like homesteads, urban public housing, and widespread mortgage insurance tended to reinforce segregation, and in a few instances, created segregated communities from formerly integrated ones.

### B. Racial Bars in the Federal Subsistence Homesteads

Before considering conventional public housing and mortgage insurance, it is worth visiting a less well-known New Deal program that shows how the first large federal involvement in West Virginia housing promoted segregation. The Federal Subsistence Homestead program meant to address Depression-era poverty by granting selected residents land, shelter, and work in planned agricultural communities.<sup>59</sup> The national pilot project, Arthurdale, was launched in West Virginia and actively excluded African Americans.<sup>60</sup> The other two homesteads in the state, Tygart Valley and Red House Farms, also excluded African Americans.<sup>61</sup> Though it was a federal program, the move to bar Black residence in the homesteads involved local and state decisions as well.<sup>62</sup>

Scott’s Run, a coal-rich hollow east of Morgantown, inspired the creation of Arthurdale. In the 1920s, Scott’s Run’s population was majority foreign-born whites and around 1/5 African American.<sup>63</sup> Likely because of

<sup>56</sup> *Residential Segregation Ruled Illegal by Court*, PITTSBURGH COURIER, Nov. 23, 1929, at 5.

<sup>57</sup> THOMAS E. POSEY, *THE NEGRO CITIZEN OF WEST VIRGINIA* 78 (1935).

<sup>58</sup> For a detailed look at the aftermath of *Brown*, see Kenneth R. Bailey, *The Other Brown v. Board of Education*, 3 W. VA. HIST.: J. REG’L STUD. 53 (2009).

<sup>59</sup> See generally Phillip M. Glick, *The Federal Subsistence Homesteads Program*, 44 YALE L.J. 1324 (1935).

<sup>60</sup> See *supra* notes 68–85 and accompanying text.

<sup>61</sup> See *supra* notes 90–107 and accompanying text.

<sup>62</sup> 2 BLANCHE WIESEN COOK, ELEANOR ROOSEVELT 139–40 (2000).

<sup>63</sup> Ronald L. Lewis, *Scott’s Run*, W. VA. ENCYCLOPEDIA (Oct. 29, 2010), <http://www.wvencyclopedia.org/articles/204> (last visited Aug. 30, 2020); *History*, SCOTTS RUN MUSEUM & TRAIL, <https://scottsrnmuseumandtrail.org/history> (last visited Aug. 30, 2020).

interracial union organizing, housing and social life in Scott's Run were relatively integrated.<sup>64</sup> White and Black children played together during recess from their separate schools.<sup>65</sup> Lorena Hickok, an Associated Press reporter and intimate companion of Eleanor Roosevelt, visited Scott's Run on an assignment covering coal-mining areas in southwestern Pennsylvania and West Virginia, calling it "the worst place [she]'d ever seen . . . ramshackled houses, black with coal dust, which most Americans would not have considered fit for pigs . . . in those houses every night children went to sleep hungry, on piles of bug infested rags."<sup>66</sup> Her description of Scott's Run convinced the First Lady to visit. After her visit, Roosevelt advocated the creation of planned subsistence homesteads to show how government could ease rural poverty.<sup>67</sup>

With the help of the American Friends Service Committee, which had already been working with the West Virginia University ("WVU") extension service to start garden clubs in the area, Roosevelt planned for a federal homestead near Scott's Run.<sup>68</sup> On October 12, 1933, Interior Secretary Harold Ickes publicly announced the purchase and the "'demonstration project' for unemployed coal miners."<sup>69</sup> The overseer of this extension program was Bushrod Grimes, who resigned from his position with WVU in November 1933 after being appointed project manager of Arthurdale.<sup>70</sup>

Seven months prior to the announcement of Arthurdale, the Charleston NAACP made note that Secretary Ickes, former President of Chicago's NAACP, promised "a square deal to all regardless of race or creed" in his administration of federal programs.<sup>71</sup> This promise apparently did not reach Grimes, who, with assistance from colleagues at WVU, "isolated all of the colored people we had registered and all foreigners," then struck them from Arthurdale's application

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<sup>64</sup> *History*, SCOTTS RUN MUSEUM & TRAIL, <https://scottsrnmuseumandtrail.org/history> (last visited Aug. 30, 2020).

<sup>65</sup> *Id.*

<sup>66</sup> Stephen Edward Haid, *Arthurdale: An Experiment in Community Planning, 1933–1947* 65 (1975) (unpublished manuscript) (on file with West Virginia University) (quoting LORENA HICKOK, *RELUCTANT FIRST LADY* 136–37 (1962)).

<sup>67</sup> COOK, *supra* note 62, at 140.

<sup>68</sup> Haid, *supra* note 66, at 74.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 82. Grimes found the land that would become Arthurdale's title could be traced to an 18th-century colonel, who was supposedly buried on it with his two wives and two-hundred slaves. *Id.* at 70.

<sup>71</sup> Executive Committee Meeting Minutes of the Charleston Branch of the NAACP (Mar. 10, 1933) (on file with the West Virginia and Regional History Center).

pool.<sup>72</sup> Arthurdale's first round of homesteaders included no African Americans.<sup>73</sup>

In November 1933, Nutter, representing the state NAACP, inquired about the racial policy of the homesteads.<sup>74</sup> A project administrator explained that Arthurdale would include only native-born whites because of "the problem of segregated schools in West Virginia."<sup>75</sup> Nutter replied, quoting the administrator's letter: "We can readily understand why you state that 'I am aware of the fact that this seems to put the approval of the Federal government on segregation,' because it does absolutely nothing else . . . [It is] astounding that the Federal government itself should try to invalidate the Fourteenth Amendment."<sup>76</sup> Nutter also attacked the administrator's attempt to say that the decision came from West Virginia, not Washington, pointing out that the millions of dollars spent on the homesteads came from the Federal Government.<sup>77</sup>

After finding out that all residents were U.S.-born whites, Roosevelt herself asked those selected to accept Black residents in future rounds.<sup>78</sup> She received a resounding no. The selected homesteaders worried about losing the respect of nearby Reedsville, which had protested the possibility of Black residents near the town, and the impracticality of building a separate school for non-white homesteaders.<sup>79</sup> Moreover, the homesteaders claimed, "without prejudice to the race, and with the feeling that all races should have equal opportunity, we believe that those who are clamoring for admission are not Negroes, but are of mixed blood and far inferior to the real Negroes who refuse

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<sup>72</sup> Deposition of Bush Grimes dated Sept. 1, 1934 (on file with the West Virginia and Regional History Center).

<sup>73</sup> A few foreign-born white residents made it in, likely due to mistakes on the part of those reading the applicants' names.

<sup>74</sup> See Executive Committee Meeting Minutes of the Charleston Branch of the NAACP (Nov. 28, 1933) (on file with the West Virginia and Regional History Center).

<sup>75</sup> Letter from Clarence E. Pickett to T.G. Nutter as read into the Executive Committee Meeting Minutes of the Charleston Branch of the NAACP (Nov. 22, 1933) (on file with the West Virginia and Regional History Center). It is worth considering here how West Virginia's segregation law, which ostensibly only segregated schools, also effectively segregated housing in certain cases.

<sup>76</sup> Letter from T.G. Nutter to Clarence E. Pickett as read into the Executive Committee Meeting Minutes of the Charleston Branch of the NAACP (Nov. 28, 1933) (on file with the West Virginia and Regional History Center).

<sup>77</sup> *Id.*

<sup>78</sup> COOK, *supra* note 62, at 140.

<sup>79</sup> *Id.*

to mix with the white race.”<sup>80</sup> The homesteaders said they were “bound in conscience to take this stand” and begged Roosevelt to let them stay segregated.<sup>81</sup>

Still, Roosevelt believed most Arthurdale residents and prospective homesteaders could accept integrated living.<sup>82</sup> She suspected that someone, probably Bushrod Grimes, “was agitating quietly and effectively” to get the homesteaders to demand segregation.<sup>83</sup> She promised the national NAACP that she would visit “to talk with the women alone . . . [and] that the Homestead [program] ha[d] very definitely decided that Negroes [were] going to be admitted and the homesteaders [were] to be told that it is a policy of the Bureau which [could not] and [would] not be changed.”<sup>84</sup> These efforts proved fruitless. More rounds of residents were selected, but no Black people were admitted to Arthurdale.<sup>85</sup>

To make up for the broken promises, Eleanor Roosevelt suggested a separate homestead for Black miners from Scott’s Run.<sup>86</sup> The Homestead agency optioned either 250 or 350<sup>87</sup> acres for 15 homesteads for Black miners in Monongalia County, but the deal expired without anything being built.<sup>88</sup> Accounts favorable to Roosevelt suggest that she was powerless to defy the wishes of the homesteaders.<sup>89</sup> It seems possible, however, that pressure through withholding the brand-new homes and jobs offered to the people previously living in deep poverty might have overcome their prejudice.

The state and national NAACP attempted to secure Black enrollment in the state’s other homestead communities. A high-ranking Black official within the New Deal reported “assurance” of Black admission after conferring with an official of the Tygart Valley project.<sup>90</sup> The state NAACP followed national directives to ensure that African Americans applied to Tygart Valley, and at least 50 applied (in total, 1,640 people applied for 198 spots).<sup>91</sup> Despite its

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 141.

<sup>83</sup> Memorandum from Eleanor Roosevelt on the Conference of the Secretary with Mrs. Eleanor Roosevelt at her New York Home as read into the Executive Meeting Minutes of the Charleston Branch of the NAACP (Mar. 1, 1934) (on file with the West Virginia and Regional History Center).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> COOK, *supra* note 62, at 133.

<sup>87</sup> Haid, *supra* note 66, at 81.

<sup>88</sup> COOK, *supra* note 62.

<sup>89</sup> *Id.* at 139–44.

<sup>90</sup> Report of the Executive Secretary on Joint Committee on National Recovery in the NAACP Papers (Feb. 21, 1934) (on file with the West Virginia and Regional History Center).

<sup>91</sup> Executive Committee Meeting Minutes of the Charleston Branch of the NAACP (Mar. 9, 1934) (on file with the West Virginia and Regional History Center).

administrator's promises, it appears that no African Americans were accepted at Tygart Valley.<sup>92</sup>

After not hearing from Tygart Valley, Nutter attempted to reach the Red House Farms project in Putnam County.<sup>93</sup> An administrator refused to tell him whether African Americans could join the homestead, then stopped responding.<sup>94</sup> One hundred fifty families were selected and granted a house and about an acre of land on the project.<sup>95</sup> Originally called Red House because of the early 19th-century mansion and slave plantation nearby, the community was renamed "Eleanor" in 1935 to honor the First Lady.<sup>96</sup> Although the homestead admitted only white applicants, its newspaper was called *The Melting Pot*.<sup>97</sup>

Discrimination extended beyond the selection process for Red House Farms. As the homestead program dissolved in the 1940s, the Federal Government encouraged its tenants to buy their farms outright.<sup>98</sup> The United States of America, acting by and through the Commissioner of the Federal Public Housing Authority, transferred all of the homesteads to "Washington Homesteads," a voluntary association formed by the town's homesteaders.<sup>99</sup> The quitclaim deed from the Federal Public Housing Authority required Washington Homesteads to "lease, contract to sell, convey, or otherwise dispose of any of the dwelling units by means of and pursuant to contracts of sale, including appropriate deeds . . . and rental agreements in forms satisfactory to the Grantor" for 20 years or until the promissory note to the government was fully paid off.<sup>100</sup>

Two months later, while Eleanor's residents were still paying their promissory notes, Washington Homesteads made 140 identical deeds for Eleanor homesteaders to take ownership of the properties. Each deed contained a covenant stating "[t]hat said real estate, or any part thereof, shall not be sold to, nor occupied as owners or tenants by any person not of the Caucasian race."<sup>101</sup>

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<sup>92</sup> See E-mail from Roseann Rosier, Sec'y, Tygart Valley Homestead Ass'n, to author (Sept. 8, 2019, 12:03 PM EST) (on file with author).

<sup>93</sup> See Executive Committee Meeting Minutes of the Charleston Branch of the NAACP (Apr. 21, 1934) (on file with the West Virginia and Regional History Center); Meeting Minutes of the Charleston Branch of the NAACP (Apr. 23, 1934) (on file with the West Virginia and Regional History Center).

<sup>94</sup> *Id.*

<sup>95</sup> *History*, ELEANOR, W. VA. (Mar. 9, 2005), <http://eleanorwv.20m.com/p8.htm>.

<sup>96</sup> *Id.*

<sup>97</sup> Rick Wilson, *Eleanor*, W. VA. ENCYCLOPEDIA (May 30, 2012), <http://www.wvencyclopedia.org/articles/2177>.

<sup>98</sup> Gordon Simmons, *The Homestead Movement in West Virginia*, 31 GOLDENSEAL 18, 18–19 (2005).

<sup>99</sup> PUTNAM COUNTY DEED BOOK 84 197 (May 1, 1946); *U.S. Stepping out at Eleanor, Homesteaders Buying Project*, CHARLESTON GAZETTE, Feb. 8, 1946, at 11.

<sup>100</sup> PUTNAM COUNTY DEED BOOK, *supra* note 99, at 201.

<sup>101</sup> PUTNAM COUNTY DEED BOOK 85 471–611 (July 13, 1946).

The sale transfers between the Federal Public Housing Authority and the homesteaders went through without issue,<sup>102</sup> suggesting that the racist covenants were either missed by the federal reviewers or accepted as “satisfactory” by the Federal Government. Either way, the Town of Eleanor remained segregated with a federal stamp of approval.

The Homesteads were an instance of federal and state governments creating segregation where it had not existed before. Grimes and his colleagues, in their official roles as WVU employees, acted on behalf of a state institution when they decided that Arthurdale should admit no immigrants or people of color, groups that together constituted the majority of Scott’s Run. The officials in Washington, D.C., who justified not intervening in the decisions that made Arthurdale, Eleanor, and Tygart Valley whites-only, also represented action by the Federal Government.<sup>103</sup>

While not housing a substantially large number of people, the homestead program reaffirmed white supremacy to both white and Black audiences. Elsie

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<sup>102</sup> *Noted Farm Area Sees Agriculture Taking Back Seat in Near Future*, CHARLESTON DAILY MAIL, Aug. 3, 1947, at 13.

<sup>103</sup> The Arthurdale controversy briefly intersected with the internal politics of the national NAACP. In early 1934, W.E.B. Du Bois wrote two essays about segregation. *See* W.E.B. Du Bois, *Separation and Self-Respect*, 41 CRISIS (Mar. 1934); W.E.B. Du Bois, *Segregation in the North*, 41 CRISIS (Apr. 1934). His first contribution suggested that “groups of communities and farms inhabited by colored should be voluntarily formed,” and the second argued that the NAACP might adopt a more accommodating stance on segregation and invited submissions about the idea. W.E.B. Du Bois, *Postscript*, CRISIS 53 (1934). According to Ron Lewis and Robert L. Zangrando, Du Bois’s writings at this time constituted “a step that ended his NAACP role.” ROBERT L. ZANGRANDO & ROBERT L. LEWIS, WALTER F. WHITE 80 (2019). In the following issue, NAACP Executive Secretary Walter White, with whom Du Bois had been feuding, wrote,

Dr. Du Bois’s editorial has been used, we learn, by certain government officials at Washington to hold up admission of Negroes to one of the government-financed relief projects. Protests have been made to Mrs. Roosevelt and others by the NAACP against such exclusion. Plans to admit Negroes as a result of the protest are being delayed with the editorial in question used as an excuse for such delay.

The Charleston branch, at the urging of the national NAACP, adopted a resolution on April 9, 1934, stating the following:

[T]he [NAACP] is opposed both to the principle and the practice of enforced segregation of human beings on the basis of race and color . . . . Enforced segregation by its very existence carries with it the implication of a superior and inferior group and invariably results in the imposition of a lower status on the group deemed inferior. Thus both principle and practice necessitate unyielding opposition to any and every form of enforced segregation.

Executive Committee Meeting Minutes of the Charleston Branch of the NAACP (Apr. 21, 1934) (on file with the West Virginia and Regional History Center). DuBois left the NAACP Board and *The Crisis* for ten years shortly following the controversy. The Charleston Branch of the NAACP stopped reporting updates on the Homestead program, as its attention changed to the lynching cases across West Virginia and advocacy for fair employment of African Americans in other New Deal programs.



Clapp, nationally known director of Arthurdale's John-Dewey-inspired community school, praised the residents' "upbringing and racial background" to media.<sup>104</sup> Arthurdale's managers told newspaper reporters that "too much is at stake" to allow non-white or non-native born residents into the community because it needed "to serve as an example and an inspiration for [the] other 17 agricultural-industrial communities being sponsored by the government."<sup>105</sup> White federal officials had sold the New Deal to middle-class African Americans, promising that "the federal government would be behind the people of these communities and would therefore inevitably assume the responsibility for fair play in them."<sup>106</sup> By October 1934, the Federal Subsistence Homesteads Corporation was producing memos titled "What Actually Is Being Done to Integrate Negroes Into The Various Projects" to quell what was clearly a broken promise of the New Deal.<sup>107</sup>

The homesteads were innovative at a time when there was great need; they provided decent housing and work for people in dire straits. They were one of the few attempts in the following decades to improve housing conditions in rural areas; even after they were granted to private owners, the housing stock proved durable for decades after. Similarly, mortgage insurance and federal involvement in financing homes was a boon to working people across the country. Unfortunately, it also was withheld from African Americans, treating them as hazards to be avoided rather than fellow citizens seeking the financial stability of homeownership.

### C. Federal Lending Programs

New Deal efforts to rescue and reconstruct the real estate industry following the Great Depression adopted policies to constrain where Black people could live. At the same time, they intended to rationalize the lending process by imposing rigid and racist property assessment rules. Records of the Home Owners' Loan Corporation ("HOLC"), a New Deal agency meant to rescue homeowners from Depression-induced foreclosure and to assess urban housing quality, show how all-white neighborhoods had access to mortgage credit on beneficial terms while integrated and Black neighborhoods were seen by most

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<sup>104</sup> Daniel Perlstein, "Starting Life Again": School and Community at Arthurdale (U.S. 1934–1936), in 3 PEDAGOGIES AND CURRICULUMS TO (RE)IMAGINE PUBLIC EDUCATION 81, 90 (Aaron Koh & Victoria Carrington eds., 2015); see also Christine M. Kreiser, *Elsie Clapp*, W. VA. ENCYCLOPEDIA (Nov. 13, 2013), <https://www.wvencyclopedia.org/articles/1199>.

<sup>105</sup> Gilbert Love, *Hand-Picked Ex-Coal Miners Hope for Industry To Make Federal Homestead Project Succeed*, PITTSBURGH PRESS, June 6, 1934 at 21.

<sup>106</sup> Clark Foreman, *What Hope for the Rural Negro?*, 12 OPPORTUNITY J. NEGRO LIFE 105 (1934).

<sup>107</sup> Memorandum from John P. Murchison to Clarence Pickett, on What Actually Is Being Done To Integrate Negroes Into the Various Projects, U.S. Dep't Interior (Oct. 23, 1934) (on file with author).

lenders as unacceptable risks. Another, more durable New Deal Agency, the Federal Housing Administration (“FHA”), insured mortgages for mainstream lenders, drastically reducing the cost of financing a home. The FHA’s methodology for mortgage insurance specifically kept Black people from taking advantage of these new, beneficial terms.

Federal funding and federal authority spread racist housing policies, but local collaborators, among them powerful real estate interests, collaborated to shape the way these policies would be carried out in West Virginia. Policies adopted by HOLC and FHA for mortgage financing had knock-on effects in other federal agencies and set segregation as standard for lenders and real estate brokers.<sup>108</sup> These policies simultaneously facilitated all-white suburbs while starving Black neighborhoods of home financing, thus increasing the difficulty of building wealth for Black homeowners and prospective homeowners.

Individual area reports show how Black neighborhoods were graded as not worthy of the advantageous financing available to all-white areas. The HOLC ranking system, in which neighborhoods were rated on a scale of A to F both described existing practice and prescribed differential treatment to lower-graded neighborhoods. Areas rated C and D had usually been refused mortgage service before HOLC got involved or could only receive financing “on a very conservative basis.”<sup>109</sup> For instance, HOLC noted that in Charleston’s area D8, an area partially inside the mostly Black Triangle District, “lending institutions [would] not lend.”<sup>110</sup> The sole listed detrimental factor was its “[h]eavily colored population.”<sup>111</sup> The agency also prescribed differential treatment, saying that mortgages in C and D areas “should be made and serviced on a different basis.”<sup>112</sup>

Presence of any African Americans was sufficient to lower the HOLC rating of a neighborhood. In Wheeling, area B4 offered proximity to schools, churches, a business center and “[a]ll city conveniences and adequate transportation.”<sup>113</sup> Its sole “detrimental influence” that dropped it from an A rating was five Black families who lived on two streets.<sup>114</sup> In Huntington, Area

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<sup>108</sup> See James Greer, *The Home Owners’ Loan Corporation and the Development of the Residential Security Maps*, 39 J. URB. HIST. 275 (2013); Louis Lee Woods, II, *The Federal Home Loan Bank Board, Redlining, and the National Proliferation of Racial Lending Discrimination, 1921–1950*, 38 J. URBAN HIST. 1036 (2012).

<sup>109</sup> DIV. RSCH. & STATS., SURVEY OF HUNTINGTON, WEST VIRGINIA (1938) (on file with author).

<sup>110</sup> *Id.* at 36.

<sup>111</sup> *Id.*; Charleston, WV, MAPPING INEQ., <https://dsl.richmond.edu/panorama/redlining/#loc=14/38.354/-81.649&city=charleston-wv&area=D8&adviewer=sidebar> (last visited Aug. 30, 2020).

<sup>112</sup> DIV. RSCH. & STATS., *supra* note 109.

<sup>113</sup> Wheeling, WV, MAPPING INEQ., <https://dsl.richmond.edu/panorama/redlining/#loc=12/40.083/-80.788&city=wheeling-wv&area=B4> (last visited Aug. 30, 2020).

<sup>114</sup> *Id.*

D2, the neighborhood containing the house in question in *White v. White*, was “free from flood hazard,” an important consideration, considering the destruction of neighborhoods following a 1937 flood, but HOLC gave it its lowest ranking due to its “heavy colored population.”<sup>115</sup> The report noted limited availability of mortgage funds and a concern that the neighborhood would be “fully taken over by Negroes in due time.”<sup>116</sup> Huntington’s only D ratings went to neighborhoods with African Americans or areas heavily affected by the 1937 flood.<sup>117</sup>

While Black areas were cut off from conventional financing, areas that maintained strict all-white segregation were rewarded with more accessible capital streams. Charleston’s HOLC report noted that all areas with an A rating could easily access mortgage credit.<sup>118</sup> Edgewood, a white-only area adjoining a white-only country club, received one of Charleston’s few A ratings.<sup>119</sup> No areas that received A ratings in West Virginia reported African American or foreign-born residents.<sup>120</sup> Areas that were partially integrated were deemed risks, and residents of those neighborhoods faced the possibility of losing access to credit. Despite steady rental prices, fair mortgage loan availability, good transportation, and proximity to schools and churches, Huntington’s Ceramic Addition earned a C grade, mostly due to its 8% African American population, and its “close proximity to colored people.”<sup>121</sup>

Following the outcome of *White v. White*, Nutter said that the decision “ha[d] been received very favorably by the banks and insurance companies lending money especially in Charleston as like restrictions have caused a number of loans to be turned down in the City.”<sup>122</sup> Contrary to Nutter’s expectation, race restrictive covenants continued being adopted by new developments. The Charleston Real Estate Board declared that newer suburbs and subdivisions locally were better able to avoid “urban blight” through restrictions and that

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<sup>115</sup> *Huntington*, WV, MAPPING INEQ., <https://dsl.richmond.edu/panorama/redlining/#loc=13/38.406/-82.495&city=huntington-wv&area=D2&adview=full&adviewer=sidebar&adimage=3/74.116/-135.879> (last visited Oct. 13, 2020).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> DIV. RSCH. & STATS., *supra* note 109, at 36.

<sup>119</sup> *Charleston*, WV, MAPPING INEQ., <https://dsl.richmond.edu/panorama/redlining/#loc=13/38.345/-81.693&city=charleston-wv&adview=full&adviewer=sidebar&adimage=3/59.356/-126.211> (last visited Oct. 13, 2020).

<sup>120</sup> MAPPING INEQ., <https://dsl.richmond.edu/panorama/redlining/#loc=7/39.122/-80.837> (last visited Aug. 30, 2020).

<sup>121</sup> *Huntington*, WV, MAPPING INEQ., <https://dsl.richmond.edu/panorama/redlining/#loc=13/38.401/-82.447&city=huntington-wv&area=C9&adview=full&adviewer=sidebar&adimage=3/80.119/-131.309> (last visited Oct. 13, 2020).

<sup>122</sup> Executive Committee Meeting Minutes of the Charleston Branch of the NAACP (Dec. 6, 1929) (on file with the West Virginia and Regional History Center).

houses in restricted neighborhoods were more profitable for owners and developers.<sup>123</sup> FHA involvement in projects, including large apartment complexes, was only approved if federal officials were convinced that Black people would not live too close.<sup>124</sup>

Local real estate interests collaborated in developing and implementing racist federal housing policies. The president of Huntington's real estate board and two prominent real estate brokers and appraisers provided the data and value judgments for the city's HOLC map.<sup>125</sup> Charleston and Wheeling maps also featured prominent members of each city's Board of Realtors and long-time assessors.<sup>126</sup> The FHA set areas in Clarksburg and Bluefield as inappropriate for conventional financing for being "racial" or "red light," based on maps that city officials, Realtors, judges, chamber of commerce members, and newspaper owners marked off by hand.<sup>127</sup>

These assessment and lending policies were clearly rooted in white supremacy. Summarizing Huntington's prospects in the coming decades, HOLC reported among the city's favorable factors a "high percentage of native [w]hite population."<sup>128</sup> HOLC reports, like Judge Maxwell's reference to glue factories and slaughterhouses in *White v. White*, compared African American residents to physical blight in a city.<sup>129</sup> State power standardized a methodology to credit access and neighborhood desirability that prized native-born whites over everyone else and African Americans as a contagion to be kept out of neighborhoods.

After the New Deal, lenders who offered FHA-insured financing discriminated against African Americans, as directed by the FHA.<sup>130</sup> Officials who constructed FHA's lending maps were told to select the "reject neighborhoods in a city . . . with great care because no mortgage will be accepted for insurance in any block in this area."<sup>131</sup> A short instruction list of "Tests of a Reject Neighborhood" included criteria like "[o]ver [10%] of the residents are of

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<sup>123</sup> *Proper Planning Is Chief Factor in Development*, CHARLESTON GAZETTE, Dec. 17, 1939, at 6.

<sup>124</sup> Carl E. Koch, Report of the Rental Housing Appraiser on the Kanawha Village Corporation, To Be Erected on MacCorkle Avenue Between 39th and 41st Streets and Spreading Through to Venable Avenue, Charleston, W. Va. (Aug. 8, 1938) (on file with the National Archive and Records Administration). For completion, see *Housing Project Is Said Largest Private One in W. Virginia*, CHARLESTON GAZETTE, June 25, 1939, at 30.

<sup>125</sup> DIV. RSCH. & STATS., *supra* note 109, at 24-25.

<sup>126</sup> *Id.*

<sup>127</sup> Map of Bluefield, West Virginia, Nat'l Archives & Recs. Admin. Map Room; Map of Clarksburg, West Virginia, Nat'l Archives & Recs. Admin. Map Room.

<sup>128</sup> DIV. RSCH. & STATS., *supra* note 109, at 4.

<sup>129</sup> *Id.* at 32.

<sup>130</sup> ROTHSTEIN, *supra* note 3, at 64-65.

<sup>131</sup> Letter from Homer Hoyt to Dr. Fisher, *supra* note 20.

a race other than white.”<sup>132</sup> Almost 20 years after the *White* decision, a report for West Virginia’s Bureau of Negro Welfare and Statistics (“BNWS”) found that very few African Americans in Charleston were able to obtain FHA loans and that African Americans struggled “to obtain loans to purchase property outside of areas acceptable to banks and mortgage institutions.”<sup>133</sup> A map produced by civil rights workers in 1965 of where Black people in Charleston could live more or less lined up with the city’s HOLC and FHA maps from the 1930s.<sup>134</sup>

Lenders’ bias against Black neighborhoods had negative effects for Black property owners. Property values in Black neighborhoods did not appreciate in the way that many white neighborhoods did. As a Black middle-class Bluefield resident put it, he and his neighbors would sell their houses in a “better” Black neighborhood of the city at a loss in order to be allowed to buy in exclusively white streets in South Bluefield. Their motivation was not

to create a “civil rights” incident but rather to be in a position to obtain better standards of housing for ourselves since we are professional and business people, doctors, lawyers, etc. who can well afford to buy better houses and equally well prepared to maintain them as well or better than some of the white residents.<sup>135</sup>

The request was not acted upon. This was only one of the ways that residential segregation widened the racial wealth gap that persists to this day.<sup>136</sup>

FHA endorsement of segregation into the 1950s meant that white-only West Virginia suburbs, like Weberwood, a sub-division outside of Charleston, could develop with government assistance.<sup>137</sup> Weberwood’s founders sought to protect their property values through 30-year restrictive covenants, including a race restrictive covenant.<sup>138</sup>

In early 1953, a property owner whose property abutted Weberwood—and for that reason was asked to sign Weberwood’s covenants—attempted to revoke the race restrictive covenant he had signed because of published changes

<sup>132</sup> Homer Hoyt, *Tests of a Reject Neighborhood*, FAIR HOUS. ADMIN. DIV. OF RSCH. & STATS.

<sup>133</sup> BUREAU OF NEGRO WELFARE & STATS., BIENNIAL REPORT 1947–1948 146.

<sup>134</sup> James A. Haught, *Clergy Exploring Ways To Rescue City’s Negroes*, CHARLESTON GAZETTE, Feb. 3, 1965, at 13.

<sup>135</sup> Letter to the Editor, BLUEFIELD DAILY TEL., June 2, 1966, at 4.

<sup>136</sup> ROTHSTEIN, *supra* note 3, at 185.

<sup>137</sup> More about Weberwood can be found in the West Virginia State Archives. For an index of related materials, see *Weberwood Development Corporation Collection Ms2003-289*, W. VA. STATE ARCHIVES MANUSCRIPT COLLECTION, <http://www.wvculture.org/history/collections/manuscripts/ms2003-289.html> (last visited Sept. 6, 2020).

<sup>138</sup> “The grantee shall not sell, convey, assign, transfer, lease or otherwise dispose . . . to any person of any race other than the Caucasian race.” *Weberwood Development Corporation Collection Ms2003-289* (on file with the West Virginia Archives and History Library).

made to federal housing programs after the 1948 Supreme Court decision in *Shelly v. Kraemer*.<sup>139</sup> The neighbor requested that the Weberwood Development Company sign a new contract he enclosed that contained all of Weberwood's covenants except the race-restrictive one. The new contract explained that "the Federal Housing Administration and the Veterans Administration have adopted and published certain regulations providing that they will not insure any loan upon properties [with race restrictive covenants]" and requested that no race covenants be inserted in future deeds.<sup>140</sup>

Weberwood's Board of Directors refused to sign the neighbor's new contract, writing: "The basis for our mutual agreements in this area of the city is to maintain an overall standard which is conducive to a good residential neighborhood."<sup>141</sup> The Board assured the neighboring property owner that he had nothing to fear about violating the law:

the Federal Housing Administration advises us that since these restrictions were in effect prior to February 1950 they present no problem to securing FHA loans on this property . . . your deeds should refer to the original restrictions rather than set them forth as new restrictions. No doubt your legal counsel can arrange the proper deed.<sup>142</sup>

Mentioning the "higher than average resale value" for Weberwood and Weberwood-adjacent property, the Board enforced segregation without ever mentioning race: "We feel that it is to your advantage as well as your neighborhood and our own to hold to these standards."<sup>143</sup> Weberwood's action demonstrated the FHA's enduring commitment to segregation and the continued potency of the belief that non-white residents damaged property values.

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<sup>139</sup> In the 1948 restrictive covenant cases, the U.S. Supreme Court found that judicial enforcement of racist covenants violates the Fourteenth Amendment in states and the Fifth Amendment in federal territories, even though the Court still held "that the restrictive agreements, standing alone, cannot be regarded as violative of any rights guaranteed . . . by the Fourteenth Amendment." The decision came with substantial political pressure: a coalition of identity-based pressure groups, labor unions, and human rights organizations filed amicus briefs and more than a dozen law review and sociology articles published in the preceding two years (some in coordination with the NAACP) questioned the legality and merit of race covenants were appended to the briefs. The Truman administration submitted the first amicus brief filed by the Federal Government in a civil rights case. See Leland B. Ware, *Invisible Walls: An Examination of the Legal Strategy of the Restrictive Covenant Cases*, 67 WASH. U. L. REV. 737, 759–61 (1989). Even with such pressure, the Congress decided against including non-discrimination language in the expansive National Housing Act of 1949. See TAYLOR, *supra* note 5, at 25–55.

<sup>140</sup> Proposed Agreement Between Weberwood Development Corporation and H.D. Crane (Jan. 22, 1953) (on file with the West Virginia Archives and History Library).

<sup>141</sup> Proposed Agreement Between Weberwood Development Corporation and H.D. Crane (Feb. 13, 1953) (on file with the West Virginia Archives and History Library).

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

At multiple points, Weberwood received support from state, federal, and local governments. Through persistent lobbying, Weberwood's organizers convinced the State Road Commission to build a secondary road through the development.<sup>144</sup> Like other white-only suburbs across the country, Weberwood's ability to make racially segregated housing post-*Shelley* depended on financing insured by the FHA.<sup>145</sup> Weberwood received approval for financing and construction from the FHA's Planning Commission, and it likely received support from Charleston's Municipal Planning Commission.<sup>146</sup> It is difficult to imagine Weberwood being built as quickly or with as many amenities without this financial support that had been actively denied to prospective Black homebuyers in the same period.

Weberwood was not the only West Virginia development built post-*Shelley* to contain race restrictive covenants in its deeds.<sup>147</sup> There is no record of Weberwood attempting to enforce its racial covenant against a prospective buyer, and its lawyers advised the group to remove the covenant in the 1970s. Yet while it and other suburbs accumulated value, Black people were being denied rental units, financing, and even home tours of such areas.<sup>148</sup> Weberwood's status, evident from profiles in the Charleston newspapers, depended on its perception as an exclusive neighborhood; and in this case, exclusive meant whites-only. Public money and government assistance, some funded by the toil of non-white people, supported racist development.

#### D. Urban Public Housing and Segregation

All municipal public housing constructed during the New Deal in West Virginia was segregated.<sup>149</sup> These projects gave decent housing to some Black people in the state, though they also displaced people who were not rehoused.<sup>150</sup> At least into the 1960s, public housing in the state was planned and maintained to keep racial residential segregation entrenched.<sup>151</sup> While beneficial to those

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<sup>144</sup> John H Howell, *Early History of Weberwood: A Unique Development* (1994) (on file with the West Virginia Archives and History Library).

<sup>145</sup> ROTHSTEIN, *supra* note 3, at 71, 87.

<sup>146</sup> Letter from RL Poteet (Oct. 21, 1947) (on file with the West Virginia Archives and History Library).

<sup>147</sup> KANAWHA COUNTY DEED BOOK 840 283 (July 21, 1948); KANAWHA COUNTY DEED BOOK 840 473 (July 13, 1948); KANAWHA COUNTY DEED BOOK 841 143 (July 10, 1948).

<sup>148</sup> K. W. Lee, *Racial Bias in Charleston Area Housing Charged*, CHARLESTON GAZETTE, Jan. 7, 1965, at 13.

<sup>149</sup> *See infra* notes 153–206.

<sup>150</sup> *See id.*

<sup>151</sup> *See id.*

admitted, capricious policies also barred public housing from some of the people who needed it most.<sup>152</sup>

New Deal Administrator Harold Ickes, a racial progressive compared to others in the Roosevelt administration (also the top official for the Homestead program) required that public housing built across the country match the racial proportions of the areas in which it was built.<sup>153</sup> The first housing project built in West Virginia, Littlepage Terrace in Charleston, housed only white people.<sup>154</sup> The second, Washington Manor in Charleston, housed both white and Black people. Washington Manor was built over Estill Street, a majority Black area of Charleston's Triangle District.<sup>155</sup> The complex had separate white and Black buildings, with entrances deliberately planned to minimize interaction between the two.<sup>156</sup> In Mount Hope, the nation's smallest municipality receiving the first round of federal assistance for public housing (population 2,361), 35 dilapidated shacks built by the defunct Sugar Creek Coal Company were replaced with 25 duplexes for white residence, "Stadium Terrace," and over a nearby hill, ten duplexes for Black families, "DuBois Homes."<sup>157</sup> In Huntington, Washington Square, a project for 80 African American families, was built near Lewis and Cora White's former house, while Marcum Terrace and Northcott Court were built in white neighborhoods and housed only white families.<sup>158</sup>

The U.S. Housing Authority's programs during the New Deal were meant not for those in the most dire straits financially or the worst housing conditions, but for the "deserving poor" who worked full time and fit the family structure deemed socially acceptable.<sup>159</sup> This orientation is visible in the Huntington Housing Authority's ("HHA") public relations after it prevailed against a real estate broker who sued to enjoin it from constructing its first

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<sup>152</sup> See *infra* notes 198–203 and accompanying text.

<sup>153</sup> ROTHSTEIN, *supra* note 3, at 21.

<sup>154</sup> Two African American architects were involved in designing Charleston's early public housing: John C. Norman Sr. and Julius Meredith Gardner. See Charleston Hous. Auth., *The New Deal and Washington Manor/Littlepage Terrace Public Housing Projects*, [https://www.ckha.com/documents/TheNewDealandWashingtonManor\\_000.pdf](https://www.ckha.com/documents/TheNewDealandWashingtonManor_000.pdf) (last visited Aug. 30, 2020). Federal requirements implemented in the New Deal prevented public projects from exclusively using white labor and contracting. *Id.*

<sup>155</sup> See *id.*

<sup>156</sup> *Housing Units To Open Feb. 10*, CHARLESTON DAILY MAIL, Jan. 29, 1941, at 5; *Tenants Amazed at Quality*, CHARLESTON DAILY MAIL, Sept. 8, 1940, at 2.

<sup>157</sup> *Mt. Hope Asks \$180,000 for Slum Clearance*, BECKLEY RALEIGH REG., Mar. 18, 1938, at 1; *Families Move In Stadium Terrace*, BECKLEY RALEIGH REG., June 19, 1940, at 2; *Statistics May Assure Federal Sum*, BECKLEY RALEIGH REG., July 22, 1938, at 5.

<sup>158</sup> *Untitled*, HERALD ADVERTISER, July 7, 1940, at 1.

<sup>159</sup> *Chapman v. Huntington Hous. Auth.*, 3 S.E.2d 502, 506 (W. Va. 1939); ROTHSTEIN, *supra* note 3, at 18.



projects.<sup>160</sup> Public housing was a boon to the families of servicemen and veterans, and “[a]n opportunity to live in the American way.”<sup>161</sup> The HHA set stringent entrance requirements “to ensure that the right families are admitted first.”<sup>162</sup> Partly, these restrictions came about to defend public housing from the real estate industry’s ceaseless political attacks.<sup>163</sup> Requirements like full-time employment, sufficient income, and maximum family size may have protected the image of the housing authorities, but they also shut out people most in need of decent housing.

Public housing improved living standards for some Black people in West Virginia but not necessarily the same people displaced by its construction. Many of the people who lived in the Estill Street area of Charleston, where Washington Manor would be built, either did not make enough money or meet requirements to be admitted to the housing. A *Gazette* editorial warned that if these residents were “allowed to go their way without help and direction they [were] going to set up slums elsewhere.”<sup>164</sup> The Charleston Housing Authority (“CHA”) declared that it would not pay for moving expenses of the displaced or assist in any other way besides referring them to social welfare organizations and real estate brokers.<sup>165</sup> The owner of most of the slum property on the project site received more than \$60,000 for its properties, however.<sup>166</sup> Newspaper publicity for the new apartments suggested that rents at Washington Manor were only slightly higher than those paid on Estill Street, but it made no indication that former residents had actually been resettled.<sup>167</sup> Years later, an observer said that those who resided on Estill Street “were turned out into the streets without any housing provisions for them, and they simply formed new ghettos.”<sup>168</sup>

Tension over race-based assignments in public housing was evident in the planning for Charleston’s third public housing project, Orchard Manor. After

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<sup>160</sup> *Chapman*, 3 S.E.2d at 502. After *Chapman*, Huntington’s board of Realtors continued opposing public housing into the following decades, recommending the city to, in one pamphlet, “[r]eject public housing as a wasteful, extravagant and ineffective solution to our housing problems.” HUNTINGTON BD. OF REALTORS, A POSITIVE PROGRAM FOR BETTER HOUSING IN HUNTINGTON (1959).

<sup>161</sup> [Untitled], HERALD ADVERTISER, July 7, 1940, at 2.

<sup>162</sup> *16th Street: Section Enjoyed Another Prosperity Era as 500 Houses Were Built for Families*, HUNTINGTON DAILY NEWS-DIG., Feb. 19, 1953, at 2.

<sup>163</sup> See Resolution Opposing Public Housing, Charleston Housing Authority Minutes Book 2, at 23 (May 19, 1944) (on file with author).

<sup>164</sup> Editorial, *Slum Clearance*, CHARLESTON GAZETTE, Jan. 20, 1939, at 12.

<sup>165</sup> *CHA Is Unable To Aid Families*, CHARLESTON GAZETTE, July 4, 1939, at 1.

<sup>166</sup> *\$1,600,000 Housing Project Is Okayed*, CHARLESTON GAZETTE, Apr. 11, 1939, at 9.

<sup>167</sup> *Second Housing Project To Be Ready by Nov. 15*, CHARLESTON GAZETTE, Sept. 8, 1940, at 31.

<sup>168</sup> Michael Putzel, *Delay of Triangle Rezoning Urged*, CHARLESTON GAZETTE, Dec. 14, 1965, at 15.

finding that property in the Triangle District was too expensive to build an additional Black-only project, CHA set to make a new, significantly larger white-only housing project, “constructing” new units for Black occupancy by making formerly white buildings in Washington Manor available to Blacks.<sup>169</sup> In response, African American residents rose up to demand a share of the new project by drawing on their status as taxpayers and property owners in the city. The Charleston’s Business and Professional Men’s Club, Capitol City Civic Club, and West Charleston Citizen’s Club—all African American organizations—sent letters and visited CHA to demand that the new project not be designated all-white.<sup>170</sup> A letter from over 400 Black Charleston residents read:

As taxpayers we feel that only in the opening of this project to Negroes can we reap the full benefits of our tax dollar; as citizens we feel that we would be enjoying the full rights of our citizenship in this democracy; as members of a progressive community we feel that such a gesture would be another step showing our community’s leadership in human relations. Therefore, we appeal to you, citizens and leaders in the greatest democracy on earth whose government and peoples have championed the causes of the oppressed and minorities of the world, to demonstrate that democracy works by granting us, a minority group, the full privilege of living in “Orchard Manor.”<sup>171</sup>

The only African American CHA member supported the request, but the Authority did not change its view.<sup>172</sup>

Complaints to Washington, D.C., brought suggestions from federal Public Housing officials to reserve units in the new development for Black residents or possibly lose funding for the project.<sup>173</sup> CHA continued planning the project to be white-only.<sup>174</sup> Its justifications were that the new housing would not

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<sup>169</sup> Charleston Housing Authority Meeting Minutes Book 2 (Aug. 28, 1950) (on file with author).

<sup>170</sup> Charleston Housing Authority Meeting Minutes Book 3, at 62 (Mar. 14, 1952) (on file with author).

<sup>171</sup> Letter from A. R. Hanson, Dir., Atlanta Field Off. Pub. Hous. Admin., (Oct. 21, 1953) (on file with author).

<sup>172</sup> Charleston Housing Authority Meeting Minutes Book 3, at 63 (Apr. 14, 1952) (on file with author).

<sup>173</sup> See Charleston Housing Authority Meeting Minutes Book 3, at 112 (Sept. 3, 1953) (on file with author); see also Letter from A. R. Hanson, *supra* note 171, at 246.

<sup>174</sup> Charleston Housing Authority Meeting Minutes Book 3, at 247 (Nov. 10, 1953) (regarding employment prospects).

displace Black residents (this was disputed), that there were no schools for African Americans nearby the proposed site, and that

manufacturing plants located in the vicinity of the [the new] Project employ a very limited number of colored persons, the sources of employment for the colored market, vis. Domestics, janitors of stores and office buildings, hotels, warehouses, etc. are more centrally located in the center of the City, thus making residence in [Washington Manor] much more convenient to colored employment.<sup>175</sup>

The CHA's reasoning reveals its intent to further concentrate the African American population in the city's downtown and to further rationalize the bar on African American employment in the Kanawha Valley's chemical and manufacturing plants.<sup>176</sup>

Labor disputes, construction problems, and bad weather delayed Orchard Manor's construction.<sup>177</sup> Three years after its announcement, Orchard Manor's racial distribution of units remained uncertain. Following the Supreme Court of the United States' declaration that separate is inherently unequal in the 1954 *Brown v. Board of Education*<sup>178</sup> decision, CHA's one Black commissioner introduced a resolution declaring that African American leadership wanted an integrated Orchard Manor and that any other plan would "be not only retrogressive but also inequitable and discriminatory since the facilities in the old project could not be considered equitable compared with a new project."<sup>179</sup> The Authority refused to pass the resolution, despite discussing it "at length" in the following meetings.<sup>180</sup> Orchard Manor's racial policy stayed out of CHA's officially recorded minutes for the next six months. An anonymous letter from someone associated with the project reported that it could have been fully occupied by the close of 1954 but "[was] delayed because of the segregation question which the City administration feared to face before election."<sup>181</sup>

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<sup>175</sup> See Letter from Philip H. Hill, Charleston Slum Clearance & Redevelopment Auth. (Feb. 16, 1953) (on file with author) (regarding displacement of Black residents); Charleston Housing Authority Meeting Minutes Book 3, at 113 (Aug. 8, 1952) (regarding employment prospects).

<sup>176</sup> See Colin E. Reynolds, *The Rise and Fall of Bureau of Negro Welfare and Statistics, 1921–1957*, 9 W. VA. HIST.: J. REG'L STUD., Spring 2015, at 10 (discussing segregation in chemical industry).

<sup>177</sup> *Work Delays, Higher Costs Hurt Housing*, CHARLESTON DAILY MAIL, July 1, 1954, at 1.

<sup>178</sup> 347 U.S. 483 (1954).

<sup>179</sup> Charleston Housing Authority Meeting Minutes Book 3, at 302–03 (June 10, 1954) (on file with author).

<sup>180</sup> Charleston Housing Authority Meeting Minutes Book 3, at 334–35 (Oct. 5, 1954) (on file with author).

<sup>181</sup> J. B. Wintz, Letter to the Editor, *Who Will Live There?*, CHARLESTON DAILY MAIL, May 19, 1955, at 14.

Closely following the election, the conflict spilled out in the Charleston City Council, when City Councilman and Charleston NAACP head Willard Brown “charged that since the present administration had named several members of the local authority ‘it is chargeable with failure of supporting integration.’”<sup>182</sup> Mayor Copenhaver responded “that his administration had done many things to improve conditions of Negroes ‘despite the action of a few who are unwilling to lift the Negroes from the mire.’”<sup>183</sup> The Mayor’s defenders argued that the Housing Authority was an independent entity not subject to the Mayor’s control,<sup>184</sup> absolving him of responsibility for the authority’s policies.

In April 1955, CHA resolved “that [Orchard Manor] be made available to both white and non-white families” and set “racial equity to be maintained for the entire program . . . 80.9% white–19.1% non-white.”<sup>185</sup> A submission to the *Charleston Gazette*’s “Readers Vent” expressed the racist sentiment Mayor Copenhaver and the Housing Authority had wanted to avoid drawing in the election, claiming that “[t]o date, the Negroes have all the units they want in Orchard Manor,” while despairing the recent, rapid integration of schools in the area: “I suppose the next thing will be to enter marriage. I don’t think the Negro will stop until he feels he is equal with the white.”<sup>186</sup> Consistent pressure on CHA and an assist from changing national currents kept Orchard Manor from being another all-white project.

Despite various declarations from the Federal Government and local officials, segregation remained normal in West Virginia public housing up to and after the 1964 Federal Civil Rights Act that banned it. A 1959 consultant’s report on the need for additional public housing recommended that Huntington satisfy Black demand for public housing by desegregating Northcott Court, which had vacancies but was maintained as almost exclusively white.<sup>187</sup> Beckley’s attempt at building public housing in 1962 promised separate buildings for white and Black residents.<sup>188</sup> Charleston’s Washington Manor and Littlepage Terrace projects remained mostly segregated, with separate buildings and playground

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<sup>182</sup> *Councilman Brown Chides Mayor on Racial Problem*, CHARLESTON DAILY MAIL, Nov. 14, 1954, at 14.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> Charleston Housing Authority Meeting Minutes Book 3, at 410 (Apr. 15, 1955) (on file with author).

<sup>186</sup> A. L. White, Letter to the Editor, CHARLESTON GAZETTE, June 8, 1955, at 6.

<sup>187</sup> Somerville & Co., Majority Report to the City Council on the Status of Public Housing in Huntington 6–7 (Jan. 11, 1960) (on file with author). This report was conducted by a consultant aligned with the city’s Board of Realtors. *Id.* Unsurprisingly, its final recommendation was to not build more public housing. *Id.*

<sup>188</sup> *Separate Housing Centers Scheduled for Both Races*, BECKLEY POST-HERALD, Apr. 13, 1962, at 1. This project was shelved, and no public housing was built in Beckley until over a decade later. *Id.*

facilities for white and Black families into the 1960s.<sup>189</sup> Mount Hope's Stadium Terrace and DuBois Homes, known colloquially as "white camp" and "Black camp," remained segregated into the 1970s.<sup>190</sup> In 1973, Huntington's NAACP sued the city's housing authority for allegedly refusing to admit Black applicants to projects in white neighborhoods.<sup>191</sup>

Race was a factor in the introduction and placement of public housing across the state. In Bluefield, the city's mayor and real estate industry helped kill a proposed housing project for elderly and low-income people in the 1960s by allegedly warning that part of the project would "integrate a white neighborhood."<sup>192</sup> In cities where public housing already existed, it was often used to further segregate Black or poor areas. Charleston's NAACP president Willard Brown opposed a city-approved plan to build two hundred additional units of public housing in Charleston's Triangle District; he called it "a continuation of the economic and racial segregation that is prevalent in that area now" and argued it "would create a ghetto both racially and economically."<sup>193</sup> Up until the 1970s, most public housing in Charleston was built north of the Kanawha River, away from upscale neighborhoods like South Hills, Kanawha City, and Edgewood.<sup>194</sup>

Public housing attracted disproportionate interest from African Americans in West Virginia cities because it accepted Black tenants and was often a step-up in quality and price from more exploitative alternatives. A Huntington reporter observed that "[i]nterest in [Washington Square] heightened as it neared completion [when] residents in sub-standard dwellings began to

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<sup>189</sup> K. W. Lee, *Pattern of Segregation Seen in Public Housing*, CHARLESTON GAZETTE, July 24, 1965, at 1. According to civil rights groups the city made a token display of moving one Black family into Littlepage Terrace, one white family into the Black section of Washington Manor, and one Black family into the white section of the same. *Id.*

<sup>190</sup> Oral History from Reverend Matthew J. Watts (on file with author, to be stored at the West Virginia Archives and History Library).

<sup>191</sup> Pamela Brown, *Judge Refuses To Throw out NAACP Suit*, HERALD ADVERTISER, June 14, 1973.

<sup>192</sup> *Housing Project Can Be Saved*, BLUEFIELD DAILY TEL., Oct. 28, 1966, at 4. *Local PHA Four Weeks Behind Slate*, BLUEFIELD DAILY TEL., Dec. 12, 1967, at 2. The mayor later told the paper,

I did not make that statement. What I meant was that a lower class of people would be placed in a neighborhood which may not want them. Whenever you put those qualified for low rent public housing in an established neighborhood, you are going to disrupt the neighborhood. The type of person occupying a public housing project is not the most desirable neighbor.

BLUEFIELD DAILY TEL., Dec. 20, 1967, at 19.

<sup>193</sup> Meeting Minutes of the Charleston City Council (Jan. 23, 1967) (on file with author).

<sup>194</sup> Letter from Don Hummel, Assistant Sec'y, U.S. Dept. of Hous. and Urb. Dev. (1955–1961), to Arch A. Moore, Jr., Congressman, First District of W. Va. (Feb. 2, 1968) (on file with the West Virginia and Regional History Center); see also Kay Michael, *South Hills Stuck on Housing View*, CHARLESTON GAZETTE, Aug. 18, 1971, at 16.

realize what it would mean to them to move into a neighborhood where the bills could be met at the end of the month with enough left over for groceries.”<sup>195</sup> Or, as a commenter on Charleston’s housing situation in the mid-1950s wrote, “[o]n the basis of population [African Americans] are entitled to occupy [10%] . . . . However, this project is supposed to be for those of low-income already poorly housed. On this basis [Black residents] would be entitled to occupy not less than 75[%].”<sup>196</sup> By 1960, African Americans constituted 25% of applicants to the HHA while comprising only 5% of the city’s population.<sup>197</sup> One African American Charleston family that was relocated to public housing in the mid-1960s found superior conditions and the share of their income going to rent and utilities reduced from two-thirds to less than half.<sup>198</sup> In the 1960s and 70s, public housing in Charleston and Huntington had waiting lists of hundreds; some estimated 700 people in Charleston’s mostly African American Triangle District expressed a preference to move to public housing over their rental properties.<sup>199</sup>

Victories against race segregation in public housing did not mean Authorities would easily overcome other prejudices. Until late 1967, CHA refused to admit most unwed mothers, including those displaced by construction of public projects.<sup>200</sup> Many of those displaced were single Black mothers who worked full-time in domestic service.<sup>201</sup> The long-time director of CHA justified the bar by saying that public housing tenants were “proud of their environment” and did not want to be associated with illegitimate children.<sup>202</sup> Local civil rights groups attempted to overturn this decision by appealing to the Federal Public Housing Authority, which balked at overturning CHA’s rule.<sup>203</sup> It took a class action lawsuit in federal court, filed by four unwed mothers who had been rejected public housing in Charleston, to force a resolution that CHA would not deny admission solely on “status as an unwed mother.”<sup>204</sup>

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<sup>195</sup> *16th Street: Section Enjoyed Another Prosperity Era as 500 Houses Were Built for Families*, HUNTINGTON DAILY NEWS-DIG., Feb. 19, 1953, at 2.

<sup>196</sup> Wintz, *supra* note 181.

<sup>197</sup> Somerville & Co., *supra* note 187.

<sup>198</sup> Jim Thorn, *Unable To Relocate 8 Unwed Mothers*, CHARLESTON DAILY MAIL, Mar. 2, 1966, at 15.

<sup>199</sup> K. W. Lee, *City Ignored Please for Housing*, CHARLESTON GAZETTE, Aug. 28, 1965, at 1; *see also* Angela Green, *Being Black in Huntington*, HUNTINGTON ADVERTISER, Dec. 14, 1973.

<sup>200</sup> K. W. Lee, *City Rejects Unwed Mothers*, CHARLESTON GAZETTE, Mar. 23, 1966, at 13.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> K. W. Lee, *U.S. Cites Local Power*, CHARLESTON GAZETTE, Mar. 28, 1966, at 3.

<sup>204</sup> At one point during the controversy, the chair of the Authority said, “I feel sorry for those children, but I don’t feel sorry for their mothers. What can be done? . . . Maybe stop them from having more babies.” K. W. Lee, *City Won’t Lower Unwed Mothers Bar*, CHARLESTON GAZETTE, Oct. 5, 1967, at 21; K. W. Lee, *Unwed Mothers Sue for Housing*, CHARLESTON GAZETTE, Oct. 26, 1967, at 3. Even after the policy change, the Authority noted it might still consider “the presence

While a boon to those admitted, public housing did not solve the sub-standard housing crisis for poor people in the state, a crisis made worse for those cut off to most of the housing market because of their race, class, and family status. In the effort to block public housing in the state via injunction, a Huntington-based realtor argued that in providing housing to only 2,000 of Huntington's 75,000 people, public housing "constitute[s] a gross discrimination against home owners and renters in the city."<sup>205</sup> This point contained an element of truth. Public housing did not guarantee decent housing to all or even most of the people poorly housed in the state. In 1965, more than 1,750,000 people lived in West Virginia, and there were only 2,185 units of public housing, more than 80% of which was in Charleston, Wheeling, and Huntington.<sup>206</sup> For many Black people unable to gain admission, exploitative renting conditions prevailed.<sup>207</sup>

### *E. Renting in the Private Market*

Those without the money to buy or build their own home or be admitted into public housing often found rental conditions challenging. Overcrowding and poor housing stock predictably led to preventable disease and social disorder.<sup>208</sup> Housing for low-income people was not profitable to build or maintain, and new suburban real estate that sprouted up after the war was more likely than not to resemble Weberwood in racist occupancy restrictions. Single, low-income Black women with children often ended up in the worst housing.<sup>209</sup> Housing quality was linked to segregation in employment as racial bars on hiring and promotion foreclosed sufficient incomes to build or buy.<sup>210</sup> The artificial scarcity created by segregation allowed for grossly exploitative rental relationships, leading to backlash in the 1960s.

The thousands of Black people who arrived in West Virginia fleeing racial violence and sharecropping in the South in the early and mid-20th century were often forced to rent in less than ideal locations.<sup>211</sup> In Fayette County, small

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of illegitimate children and the circumstances of their birth as to time and frequency." See *Unwed Mothers Not Banned*, CHARLESTON GAZETTE, Nov. 9, 1967, at 29; *Unwed Mothers' Suit Dismissed by U.S.*, CHARLESTON GAZETTE, Nov. 15, 1967, at 3.

<sup>205</sup> Chapman v. Huntington Hous. Auth., 3 S.E.2d 502, 506 (W. Va. 1939).

<sup>206</sup> PUB. HOUS. ADMIN., WEST VIRGINIA PUBLIC HOUSING PROGRAM BY CONGRESSIONAL DISTRICTS, FEBRUARY 1965 (on file with the West Virginia and Regional History Center).

<sup>207</sup> See *infra* Section II.E.

<sup>208</sup> BUREAU OF NEGRO WELFARE & STATS., NEGRO HOUSING SURVEY OF CHARLESTON 11 (1934).

<sup>209</sup> See *infra* notes 218–271 and accompanying text.

<sup>210</sup> ROTHSTEIN, *supra* note 3, at 158–69.

<sup>211</sup> BUREAU OF NEGRO WELFARE & STATS., NEGRO HOUSING SURVEY OF CHARLESTON, KEYSTONE, KIMBALL, WHEELING AND WILLIAMSON 27 (1938); see also Michael E. Kearney, *The Developmental History of a Social Action Program, Action for Appalachian Youth*, Kanawha

company towns like Cunard, Kaymoor Bottom and Top, Glen Jean, Dun Glen, and Fire Creek, maintained strict segregation.<sup>212</sup> African American housing was more likely to be in “bottom” areas, near coke ovens or tipples, and far from basic services.<sup>213</sup> A Black Ansted resident recalled having to breathe the smoke from coke ovens at home, and a Sewell resident recalled the smoke hanging “down so low that it was difficult to breathe.”<sup>214</sup> Conditions were so bad that a “bath was required to go to bed.”<sup>215</sup>

Urban living conditions for Black renters were crowded. According to the BNWS survey of Charleston, “in the territory occupied by [Blacks] the number of vacant dwellings is 4% of the total. Most of these vacant dwellings are not available to [Black] renters, as they are reserved for whites.”<sup>216</sup> Before the end of World War II, housing in West Virginia’s urban centers, particularly African American housing, was falling apart.<sup>217</sup> Of the 345 nonwhite owner-occupied houses surveyed by the FHA in Charleston, more than 25% needed major repairs (compared to less than 15% of the 4,669 white owner-occupied properties).<sup>218</sup> Of the city’s 1,246 nonwhite tenant-occupied housing units, 54% needed major repairs, compared to 27% of its 9,987 white tenant-occupied units; Huntington had a similar ratio: 41% of the city’s 628 nonwhite tenant-occupied housing units and 27.5% of its 10,707 white tenant-occupied housing units.<sup>219</sup>

Case files of the HHA give a sense of living conditions for low-income Black renters in the city in 1940.<sup>220</sup>

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County, West Virginia, 62–63 (May 1965) (Master’s thesis, Marshall University) (on file with author).

<sup>212</sup> See NORMAN JORDAN, *AFRICAN AMERICAN HERITAGE AT NEW RIVER GORGE NATIONAL RIVER* 72–78 (2010). Some company towns began to integrate voluntarily, whether through changing demographic conditions, introduction of a union, or simply through people breaking old company dogma without controversy.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* at 78–79.

<sup>215</sup> *Id.* at 81.

<sup>216</sup> BUREAU OF NEGRO WELFARE & STATS., *supra* note 211, at 24. The survey also notes that the average Black-occupied house in Charleston was two rooms smaller than the average white residence in the city; building permit averages for houses occupied by African Americans were between \$980 and \$2,500, while building permits for white-occupied residences in the city never went below \$3,300. *Id.* at 13.

<sup>217</sup> FAIR HOUS. ADMIN. DIV. OF RSCH. & STATS., *HOUSING DATA METRO DISTRICT CHARLESTON WV*, (1940) 7 (on file with the National Archives and Records Administration).

<sup>218</sup> *Id.*

<sup>219</sup> *Id.* at 6.

<sup>220</sup> Ostensibly to counter the city’s real estate brokers who contended that Huntington did not contain slums, the city’s Housing Authority published anonymized case histories, of Black tenants. For white occupants, it only described the general characteristics: newlyweds, young families, servicemen. *Untitled*, *supra* note 161.



John Doe [was] . . . employed . . . his weekly income [was] \$15. He [was] an industrious, loyal worker with years of steady employment behind him. His own family consist[ed] of his wife and four children. To make ends meet he must share his three-room shack with another family. The result is that six people, adults and children, sle[pt] in one room and five people in another. One outdoor toilet serve[d] all these people. There [was] no water in the dwelling, no electric lights.<sup>221</sup>

Other cases included a widow who lived on \$13 a week to support her six children, while paying \$16 a month in rent to live in a three room railroad flat with only occasional access to water.<sup>222</sup> They shared a toilet with four other families.<sup>223</sup> A laborer on the Chesapeake & Ohio railroad, “faithful, sober, and industrious,” lived with his wife and four young children in a three room railroad flat, “he [was] paying \$16 a month in rent and it has been raised three times recently. He declare[d] he ha[d] no place to go.”<sup>224</sup> The latter two cases had outdoor toilets; none of them had electricity or heat.<sup>225</sup> Descriptions of similar housing in the mid-1950s in Charleston reinforced the appeal of public housing:

[W]allpaper strung between rafters served as a ceiling. Sheets of tin partitioned various living units . . . . For one room, tenants were paying up to \$11 a week . . . in contrast to the \$32 average monthly that families of the public housing projects pa[id]—including utilities.<sup>226</sup>

Likely the most notorious poor, Black neighborhood in the state mid-century was Charleston’s Triangle District. From the 1920s through the 1960s, the Triangle contained the capital city’s vice district, where police raids of gambling and alcohol dens featured mass arrests, intrusive and frequent searches for weapons or contraband, and, at-times, violent abuse of sex workers.<sup>227</sup> Not

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<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Inadequate City Dwelling Elimination Quota Topped*, CHARLESTON DAILY MAIL, June 5, 1955, at 23.

<sup>227</sup> *Vicious Places Within Block of Police Report*, CHARLESTON DAILY MAIL, Jan. 21, 1923, at 19 (prostitution); *Prosecutor Moves to Close Resorts*, CHARLESTON DAILY MAIL, Nov. 17, 1927, at 1; *Poker Game Raided, Bonds Are Forfeited*, CHARLESTON GAZETTE, May 8, 1930, at 10 (gambling); *Five Negroes Face Grand Jury Trials*, CHARLESTON DAILY MAIL, Feb. 15, 1930, at 8 (robbery and guns); *46 Go to Pens in Court Parade*, CHARLESTON GAZETTE, Apr. 27, 1930, at 8. Details on the quotidian mass arrests at the Triangle are common in any Charleston newspaper from the late 1940s through the early 1950s. In 1950, a Black woman filed a lawsuit against a plain

surprisingly, Triangle residents rarely reported anything to the police.<sup>228</sup> Following a brutal vice campaign in the early 1950s waged by Mayor Copenhaver, the Triangle lost some of its anything-goes allure.<sup>229</sup> Most Triangle residents worked in the service industry, and many new arrivals in the 1950s and 1960s were seeking employment after being forced out of mining jobs by mechanization.<sup>230</sup> It remained an important space for Black culture as part of the “Chitlin Circuit,” which brought musicians like James Brown and Cab Calloway—until its destruction in the early 1970s.<sup>231</sup>

Rental housing in Charleston’s Triangle District was built by land speculators who expected downtown commercial properties to overtake the area in the 1920s.<sup>232</sup> They built large, cheap residences, “as many buildings on the lots as they could possibly stand,” to collect small rents, waiting to sell the land to commercial developers.<sup>233</sup> That commercial expansion did not arrive until the 1980s.<sup>234</sup> Until then, inflated expectations of what the land was worth, and the relatively low rents that residents could pay, meant that some owners were “reluctant about making repairs.”<sup>235</sup> Other dwellings in the Triangle were formerly single-family homes that had been sub-divided many times over.<sup>236</sup> In the 1930s, Charleston’s highest incidence of African American tuberculosis deaths and juvenile delinquency cases were in the Triangle District.<sup>237</sup> There were no recorded cases in small African American communities in Kanawha City or South Hills.<sup>238</sup> By the 1960s, the health department director reported that 60–70% of the city’s medical aid funds were spent in the Triangle.<sup>239</sup>

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clothed officer whom she solicited to her residence and who then assaulted her; she was 8-months pregnant. *Cop Faces Jury in Triangle Raid*, CHARLESTON GAZETTE, June 8, 1950, at 1.

<sup>228</sup> Don Marsh, *The Triangle: It “Scuffles” To Live*, CHARLESTON GAZETTE-MAIL, Nov. 15, 1959, at 2C [hereinafter *The Triangle*].

<sup>229</sup> *Id.*

<sup>230</sup> Kearney, *supra* note 211.

<sup>231</sup> Roxy Todd & Eric Douglas, *Community Still Grieves Loss of Triangle District*, W. VA. PUB. BROAD. (Apr. 18, 2020), <https://www.wvpublic.org/post/community-still-grieves-loss-triangle-district-once-center-black-music-and-culture#stream/0>.

<sup>232</sup> Until World War I, Black people were restricted from living anywhere else in downtown Charleston but Fry’s Alley, though the area grew to include the area bordered by the Elk River to the west and Summers Street to the east. Marsh, *supra* note 228.

<sup>233</sup> BUREAU OF NEGRO WELFARE & STATS., NEGRO HOUSING SURVEY 15 (1934).

<sup>234</sup> *About Us*, CHARLESTON TOWN CTR., <https://web.archive.org/web/20080509130040/http://charlestantowncenter.com/about/index.html>. The Charleston Town Center Mall opened in 1983. *Id.*

<sup>235</sup> BUREAU OF NEGRO WELFARE & STATS., *supra* note 233.

<sup>236</sup> BUILD A BETTER AM. COMM., BUILDING A BETTER CHARLESTON 10 (1961).

<sup>237</sup> BUREAU OF NEGRO WELFARE & STATS., *supra* note 233.

<sup>238</sup> *Id.*

<sup>239</sup> BUILD A BETTER AM. COMM., *supra* note 236, at 12.

Not all Triangle housing was slum housing. For instance, some planners included the corner of Washington and Shrewsbury Street, known as the “Block,” a predominantly professional Black business and residential area with high homeownership rates, when discussing the Triangle.<sup>240</sup> And not all housing within the typical Triangle borders was in poor condition. One observer called the Triangle

an ecological grouping of many neighborhoods which had . . . nothing to do with each other. There was a stable, modest [Black] residential area of long-time residents who wouldn’t be seen on Court Street . . . [and] the “C” Street section [Court Street] with its houses of prostitution, multi-family dwellings, and rooming houses . . . [and] Washington Manor . . . whose residents were generally at odds with the other populations . . . [and] a transient downtown white neighborhood gerrymandered along, but not integrated, with the southern edge of the section.<sup>241</sup>

And even within the dilapidated buildings, many residents found ways to make their spaces livable. As one community organizer who worked in the neighborhood during the 1960s recalled,

[i]n the Triangle . . . most of [the] houses didn’t look very good from the outside, but on the inside they were very well appointed, furnished, and maintained, which was surprising . . . In the rural areas, the houses looked great from the outside, but there was nothing inside . . . In the Triangle, in the urban areas, the houses were very well appointed, furnished, and maintained on the inside, although you would have been surprised from the way they looked on the outside.<sup>242</sup>

Yet in parts of the Triangle, living was hard. Housing shortages and extremely low incomes of some residents required that people rent rooms by the week and move frequently.<sup>243</sup> The wear and tear of overcrowded and under-maintained properties led to predictable catastrophes. On March 21, 1961, a crumbling 12-room Triangle residence that housed four families burned to the ground, leaving 13 people homeless and killing a 39-year-old city employee.<sup>244</sup>

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<sup>240</sup> See JAMES D. RANDALL & ANNA E. GILMER, *BLACK PAST* (J. D. Randall ed., 1989); see also TOM DUNHAM, *CHARLESTON IN THE 20TH CENTURY* 96, 106–07 (1stBooks ed. 2002).

<sup>241</sup> Kearney, *supra* note 211, at 62.

<sup>242</sup> Oral History from Carolyn Tillman (Oct. 1, 2019) (on file with author, to be stored at the West Virginia Archives and History Library).

<sup>243</sup> *The Triangle*, *supra* note 228.

<sup>244</sup> Charlie Conner, *Triangle Shack Fire Takes Life*, *CHARLESTON DAILY MAIL*, Mar. 21, 1961, at 1.

The house was owned by the estate of Nutter and managed by an unnamed bank, which rented it to an elderly resident, who in turn sub-let to three additional families and an unemployed, disabled miner.<sup>245</sup> The disabled miner's sole income was a \$31 social security check, out of which he paid \$27 a month for a 6 by 12 foot shack behind the house.<sup>246</sup> His toilet consisted of two tires and a cover.<sup>247</sup> The house had been scheduled for demolition after being found to violate the city's housing code.<sup>248</sup>

Investigations into Triangle housing showed the abject conditions faced by Black renters cut off from most of the housing market and the indifference of their landlords. One Triangle building, a two-story wooden frame structure which housed 12 families, including a woman and seven children in one room, had an apparent rodent infestation; holes in the walls and woodwork and cardboard ceilings; an over-fused electrical system; temporary and spliced wiring hanging from the ceilings; "the stench of humanity crowded in deplorable conditions of neglect and decay"; men sleeping off booze from the night before, often with lit cigarettes in their hands; little children playing in roach-infested dimly lit hallways amid rubble and trash; the "smell of escaping gas heavy in one hallway"; and one toilet in workable condition.<sup>249</sup>

The building was co-owned by Hubert Kelly, long-time Kanawha County Commissioner, used car salesman, and former state head of the DMV.<sup>250</sup> It was sublet by Ben Brown, a Triangle resident who at the time of the building's demolition was in jail for possession of untaxed alcohol.<sup>251</sup> Brown apparently paid Kelly and his brother \$150 a month then charged \$8 a week for each of the 20 rooms (\$640 a month, but he claimed he often could not collect from each tenant every week).<sup>252</sup> Kelly and his brother had been notified four months before about the building's code violations and did nothing to improve it, but Kelly still claimed that he was being singled out; he said he knew of other Triangle properties in worse shape.<sup>253</sup>

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<sup>245</sup> Charlie Conner, *City Is Awakening*, CHARLESTON DAILY MAIL, Mar. 10, 1961, at 17.

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> Conner, *supra* note 244.

<sup>249</sup> Charlie Conner, *Follow-Up Inspection Condemns Home for 40*, CHARLESTON DAILY MAIL, Sept. 8, 1961, at 17.

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> Brown managed a bar called "The Blue Room," where 26 people, including him, had been arrested for drunk charges the week before. *Id.*

<sup>253</sup> *Id.* at 17; see also Charlie Connor, "Unfairly Treated," *Kelly Charges at Housing Hearing*, CHARLESTON DAILY MAIL, Sept. 20, 1961, at 21. A few years later, when the building inspector again started to investigate the Triangle at the behest of civil rights group, other Hubert Kelly properties were found in similar conditions. *Triangle Apartment Said Unfit*, CHARLESTON DAILY MAIL, Nov. 9, 1965, at 13.

In another case, housing inspectors arrived to condemn a Triangle property after a very pregnant resident fell through rotten flooring.<sup>254</sup> The Gomloco Realty Company (owned by a prominent Charleston family) leased the house to a long-time Triangle resident who in turn sublet the house to three other families.<sup>255</sup> The sublessor claimed she had begged the owners to repair the house for years, but the company only provided minor spot work.<sup>256</sup> Months before, a five-year-old child had fallen through the floor near the same spot.<sup>257</sup> The management company nailed a plank over the hole.<sup>258</sup> The same company required a young Black couple with three children to make a \$55 sight unseen deposit, after which they found a rotting, unstable house.<sup>259</sup> The couple notified the building inspector, who arrived and then condemned the building.<sup>260</sup> The couple had applied to public housing, but a CHA staffer told them that the woman's children being born out of wedlock would prohibit admission.<sup>261</sup> The couple ended up staying at a relative's small apartment that already housed at least five other residents.<sup>262</sup>

The landowners of the Triangle, mostly white people who lived elsewhere, claimed that housing problems came from destructive tenants. A relative of Hubert Kelly who managed his Triangle properties explained, "[y]ou could give [Triangle tenants] the Waldorf Astoria and within a week or two it would look terrible . . . It's due to the nature of the people."<sup>263</sup> As remarks from CHA in the previous section showed, these attitudes were widespread.<sup>264</sup> Gomloco's manager also blamed tenants, and unwed mothers in particular, for causing housing problems in the area.<sup>265</sup> He said that the company made daily repairs to the 75 Triangle rental units it owned, that it had rented to some families for over 20 years, and that the subleasing system, in which one tenant in turn rented rooms at exorbitant rates to other tenants, was the source of the

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<sup>254</sup> *City To Condemn Triangle House*, CHARLESTON GAZETTE, Nov. 23, 1965, at 2.

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> Thomas A. Knight, *Triangle Dwelling Declared Unfit*, CHARLESTON GAZETTE, Mar. 12, 1966, at 11.

<sup>260</sup> *Id.*

<sup>261</sup> K. W. Lee, *Couple Blocked in House Hunt*, CHARLESTON GAZETTE, Apr. 14, 1966, at 17.

<sup>262</sup> *Id.*

<sup>263</sup> Connor, *supra* note 253.

<sup>264</sup> The *Daily Mail* editorialized against both anti-discrimination laws in housing and unwed mothers, pondering, "it must be asked how charitable it is to sentence eight children to grow up with a woman who lacked the good sense to provide them with a father." Editorial, *As Society Is Wholly To Blame, No One Is Strictly Accountable*, CHARLESTON DAILY MAIL, Mar. 31, 1966, at 4.

<sup>265</sup> James A. Haught, *Triangle Rental Firm Officer Defends Property*, CHARLESTON GAZETTE, Sept. 16, 1966, at 27.

exploitation.<sup>266</sup> He said the firm rarely evicted for non-payment and that the company retains “losing propositions” to keep occupants from “just being turned out into the street.”<sup>267</sup>

While Triangle landlords complained that some properties lost money and that they did not overcharge rent, they avoided saying that they did not make profit.<sup>268</sup> While difficult to know exactly, contemporary academic consensus holds that being a large landlord in extremely poor Black neighborhoods in the mid-20th century was actually quite profitable.<sup>269</sup> Nominally lower rents and occasional missed payments were more than made up for by not spending much money on upkeep of the properties, and subdivision and subleasing spread the risk of nonpayment.<sup>270</sup> As lifelong Triangle resident Inez Green put it: “Most of the buildings around here are owned by white folks . . . They make an awful lot of money from them, [dividing] them up and [renting] out a little room and [calling] it an apartment.”<sup>271</sup> The crowding and subleasing practices in the Triangle were made possible by segregation. With most of the city’s housing market closed off to residents because of their color, income, and family status, people were left with limited options. As the civil rights movement gathered momentum in the late 1950s, profiteering on the poor, and housing segregation in general, became a political issue.

#### *F. Organizing Against Discrimination and Exploitation*

The push for anti-discrimination housing laws in West Virginia and its municipalities came about through the wave of the civil rights movement in the state. The NAACP had been active since the early 1900s, but the late 1950s and early 1960s saw a new cast of groups that fought for civil and economic rights in cities, towns, and colleges.<sup>272</sup> In Charleston, multiple civil rights groups identified housing segregation and the exploitation it produced as a key concern,

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<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> See *supra* notes 263–267 and accompanying text.

<sup>269</sup> See N.D.B. CONNOLLY, A WORLD MORE CONCRETE: REAL ESTATE AND THE REMAKING OF JIM CROW SOUTH FLORIDA 23 (2014); see also TAYLOR, *supra* note 5.

<sup>270</sup> *Id.*

<sup>271</sup> *The Triangle*, *supra* note 228.

<sup>272</sup> See, e.g., Edward Peeks, *Civil Rights*, W. VA. ENCYCLOPEDIA (July 8, 2020), <https://www.wvencyclopedia.org/articles/1189>; James A. Haught, *Students Begin Mercer Movement*, CHARLESTON GAZETTE, Feb. 15, 1965, at 2 (discussing the statewide “Confederation of Civil Rights Organizations”); see also Randall & Gilmer, *supra* note 240; Bruce A. Thompson, *An Appeal for Racial Justice: The Civic Interest Progressives’ Confrontation with Huntington, West Virginia and Marshall University, 1963–1965* (1986) (unpublished thesis, Marshall University) (on file with author).

and they organized to confront it through lawsuits, enforcement of building codes, and voluntary open housing programs.<sup>273</sup>

Charleston's history of civil rights struggle up to the 1960s shows that the city was ahead of its time in some ways, voting rights and school integration, for instance, but forcibly segregated in others, like public accommodations, employment, and housing.<sup>274</sup> City officials and leading businessmen discouraged civil rights activism: "Calm deliberation" was the only safe way toward change; protests would bring about violence.<sup>275</sup> Charleston integrated its schools following *Brown* quickly, and local officials collaborated with media to avoid publicizing protests; a cross-burning attended by more than 300 people at an unnamed Charleston high school "never made the newspaper [*Gazette*] lest it begin a rash of similar actions across the state."<sup>276</sup> The city's approach was a source of pride for its leaders: Charleston compared itself to other places in West Virginia that were more openly hostile to the civil rights movement, for instance Bluefield or Greenbrier County.<sup>277</sup> A promotional pamphlet from the early 1960s quoted the *Daily Mail*'s observation that "[r]ecently a Negro visitor to Charleston wrote that the city had become a 'shaft of light' in West Virginia, in the progress it has made in bettering race relations."<sup>278</sup>

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<sup>273</sup> *Infra* notes 274–320 and accompanying text.

<sup>274</sup> In the same years that Charleston's mayor publicly defended African American voting rights, the city's independent school district and library commission restricted African American use of the city's previously integrated public library after accepting a large donation contingent on segregation from a white supremacist financier. *See* Kenneth R. Bailey, *supra* note 58.

<sup>275</sup> Don Marsh, *Rights Group Head Likes Judicious Approach*, CHARLESTON GAZETTE-MAIL, May 22, 1960, at 100.

<sup>276</sup> Jean Thompson Crist, *A Picture of Integration in West Virginia and the Factors Which Determined Its Progress* 22 (Jan. 15, 1963) (unpublished manuscript). "[Thomas] Stafford [of *Charleston Gazette*] told of the burning of a cross on a high school campus in Charleston with a crowd of over 300 people present [,] which never made the newspaper lest it begin a rash of similar actions across the state." *Id.* As was the case across West Virginia, Charleston's school integration often alienated black students who had previously received individualized support and attention from teachers who knew them outside of school; Black teachers were also more often laid off than white teachers. *Id.* at 16; Mary Harper, *The Effects of Integration on Garnet High School and the African-American Community in Charleston, West Virginia*, CARTER WOODSON PROJECT, <https://www.marshall.edu/woodson-dev/integration-of-garnet-high-school-charleston-west-virginia/> (last visited Aug. 30, 2020); *see also* Bickley, *supra* note 12; Sam Stack Jr., *Implementing Brown v. Board of Education in West Virginia*, 2 W. VA. HIST.: J. REG'L STUD. 1 (2008). The school board renamed schools that previously carried the names of Black educators (Garnet High School, Dunbar Elementary). The role of some media outlets took an activist tone, as storied *Gazette* reporter K. W. Lee recalls his publisher, Ned Chilton, saying to "[g]et the hell out of the newsroom and open up every damn Jim Crow place." Email from K. W. Lee, former Staff Writer, *Charleston Gazette*, to author (May 26, 2020) (on file with author).

<sup>277</sup> Peeks, *supra* note 272; *see also* Colin Fones-Wolf, *A Union Voice for Racial Equality: Miles Stanley and Civil Rights in West Virginia, 1957–68*, 10 J. APPALACHIAN STUD. 111, 119–20 (2004).

<sup>278</sup> CITY OF CHARLESTON, W. VA., A REPORT ON YOUR CITY 1962 (on file with the West Virginia Archives and History Library).

Direct action against segregation, however, opened the city. Charleston's chapter of the civil rights group Congress of Racial Equality ("CORE"), organized by Elizabeth Gilmore and others in 1958, used sit-ins and boycotts to integrate many downtown businesses.<sup>279</sup> In 1959, Charleston hotels like the Daniel Boone and the Kanawha desegregated after mounting negative national pressure for refusing to admit Ralph Bunche and Elgin Baylor.<sup>280</sup> The hotels were also motivated by the state's American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") chapter's threat to move its annual conference out of the city if they continued to bar Blacks.<sup>281</sup> Around the same time, CORE faced down the Diamond Department Store's coffee shop, which had refused to integrate after months of sit-ins and protests.<sup>282</sup>

During the Diamond boycott, CORE and its allies pressed for a city ordinance to make segregation in public accommodations illegal.<sup>283</sup> Elizabeth Gilmore indicated that CORE did not intend to stop just at public accommodations but to end segregation in employment and housing, to the point where "you wouldn't need to live six or eight in a room and pay \$60 a month for a hovel."<sup>284</sup> The city's Black middle-class and anti-racist leaders within organized labor also pushed for further changes, starting with an end to employment discrimination against Blacks in the city.<sup>285</sup> Mayor Copenhaver, who opposed civil rights legislation, instead created the "Mayor's Commission on Human Relations" to table the issue.<sup>286</sup> The year after a columnist claimed that the Commission "exists in order to have an annual dinner," the Commission put together the "Minority Roster," a clearinghouse through which city officials would attempt to match minority job seekers with hiring employers.<sup>287</sup> The

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<sup>279</sup> *Continued Fight on Segregation Urged*, CHARLESTON GAZETTE, Dec. 8, 1958, at 2.

<sup>280</sup> *Our Hotels Do City Harm, But Baylor Cheated Fans*, CHARLESTON GAZETTE, Jan. 19, 1959, at 6.

<sup>281</sup> Fones-Wolf, *supra* note 277.

<sup>282</sup> After two years of consistent sit-ins and mounting pressure, Charleston's CORE chapter made national news by desegregating the Diamond in May 1960.

<sup>283</sup> Don Marsh, *Negro Says Action Way to Get Integration*, CHARLESTON GAZETTE-MAIL, May 22, 1960, at 100.

<sup>284</sup> *Id.*

<sup>285</sup> Fones-Wolf, *supra* note 277; *NAACP Leader Raps Mayor*, CHARLESTON GAZETTE, Jan. 21, 1959, at 8.

<sup>286</sup> *City's 1959 News*, CHARLESTON DAILY MAIL, Dec. 30, 1959, at 2.

<sup>287</sup> L.T. Anderson, *Annual Dinner—The Major Goal*, GAZETTE-MAIL, Nov. 18, 1962, at 36; *Dual Use Asked for Job Office*, CHARLESTON GAZETTE, Sept. 16, 1965, at 25; Editorial, *Minority Hiring Aids Community*, Feb. 21, 1964, at 18. Newspaper accounts of the Minority Roster report successful placement of many applicants in the program. See, e.g., *Half of Minority Registrants Placed*, CHARLESTON DAILY MAIL, Dec. 10, 1965, at 17. A deeper analysis of the program is not in the scope of this Article.



“Minority Roster” would come to be the model for the city’s first efforts in ending housing segregation.

The 1964 Civil Rights Act, which passed after a 60-day filibuster that ended with West Virginia Senator Robert C. Byrd’s 15-hour speech against the bill,<sup>288</sup> brought legal protections against racial discrimination in public accommodations. By 1965, some civil rights groups in West Virginia shifted energy to the housing problem. Gilmore explained to the Charleston Ministerial Association “why there just aren’t any nice homes in Charleston” for Black people.<sup>289</sup> After calling 92 listed Realtors in Charleston, she found that none were willing to sell a house to a Black person, and one told her,

I have no intention of ever selling anything to a [Black person]. It would destroy me. The first Realtor who does that in Charleston would be ruined in his business and his church and his social groups. I like my life the way it is and I’m not going to ruin it.<sup>290</sup>

Widespread animosity toward residential integration made CORE’s goal difficult. For instance, Realtors’ fears of exile from the community or profession were based in fact. One Black buyer in Charleston with good financing was refused service by a real estate agency when he attempted to buy a house in a white, middle-class neighborhood.<sup>291</sup> The seller, an Episcopalian minister, had instructed the real estate agency not to discriminate by race, but after the agency surveyed 21 neighbors, who all said they did not want to live next to a Black person, the agency said attempting the sale would be “detrimental to its relationships in the real estate industry and the Charleston community.”<sup>292</sup>

Without the law on their side, civil rights activists sought voluntary integration. Clearing House for Open Occupancy Selection (“CHOOSE”) was started by the Kanawha Valley Council on Human Relations, an independent civil rights group, to operate as a kind of minority roster for housing.<sup>293</sup> CORE voted to incorporate itself into the group for a year to undertake the project.<sup>294</sup> In the following months, the project convinced preachers at more than 200 churches

<sup>288</sup> *Byrd’s Speech Opposing Bill Tops 15 Hours*, CHARLESTON DAILY MAIL, June 10, 1964, at 1.

<sup>289</sup> James A. Haught, *Clergy Exploring Ways To Rescue City’s Negroes*, CHARLESTON GAZETTE, Feb. 3, 1965, at 13.

<sup>290</sup> *Id.*

<sup>291</sup> *Human Rights Commission Newsletter*, MOUNTAIN REFLECTOR 8 (Nov. 1966).

<sup>292</sup> *Id.*

<sup>293</sup> Application for the Registration of the Elizabeth Hardin Gilmore House in Kanawha County on the National Register of Historic Places, U.S. DEP’T OF THE INTERIOR, <https://npgallery.nps.gov/NRHP/GetAsset/5c57c54a-0aff-4443-9083-ea57edde817c/> (last visited Oct. 6, 2020).

<sup>294</sup> *CORE Joins Relations Council*, CHARLESTON GAZETTE, Oct. 9, 1965, at 9.

throughout the Kanawha Valley to deliver sermons for open housing and against ghetto conditions, ultimately distributing some 50,000 “Good Neighbor” pledges.<sup>295</sup> In the following two months, they received about 1,600 signed pledges.<sup>296</sup> Indicative of the continued prejudice of many white people in the valley, four of the seven members of Charleston’s Mayor’s Commission on Human Relations—including its chairman—refused to sign the pledge.<sup>297</sup> Over the next year and a half, CHOOSE hired a full-time staffer and managed to make some open housing listings, though it also found that most real estate agents in the area refused requests from property owners to sell on an open-occupancy basis.<sup>298</sup> In May 1967, the project folded.<sup>299</sup>

Ending housing discrimination was not the only housing-related cause for which civil rights groups organized. On the outskirts of Charleston, in the “rotten hollows” annexed by the city in the 1950s, Coal Branch Heights took action.<sup>300</sup> A War-on-Poverty organized, interracial group of Coal Branch Heights residents called the Hilltop Improvement League successfully petitioned the city to pave the roads and provide basic infrastructure in the community.<sup>301</sup> They were nearly successful in independently building decent housing using federal funds, though an inability to procure local water service prevented the project from going through.<sup>302</sup>

Two other emergent civil rights groups in Charleston that took on housing issues were the United Neighborhood Interest Organization Network (“UNION”) and Triangle Improvement Council (“TIC”). UNION was a coalition of 22 predominantly Black groups in Kanawha County, started by the Reverend Homer Davis, a post office worker who sought more “revolutionary zeal” than the NAACP offered in the mid-1960s.<sup>303</sup> That zeal was brought to bear. The

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<sup>295</sup> “Good Neighbor” Housing: Pledge Drive Progresses, CHARLESTON GAZETTE, Oct. 13, 1965, at 15; “Good Neighbor” Pledges: Door-to-Door Drive Possible, CHARLESTON DAILY MAIL, Nov. 30, 1965, at 17.

<sup>296</sup> CHOOSE Starts, Ghettos to Remain, CHARLESTON GAZETTE, Jan. 29, 1966, at 11.

<sup>297</sup> UNION Favored for Role in Anti-Poverty Program, CHARLESTON DAILY MAIL, Nov. 9, 1965, at 18; Shy Public Panel Is Hardly Public, CHARLESTON GAZETTE, Nov. 11, 1965, at 6.

<sup>298</sup> K. W. Lee, Some Valley Realtors Held Ignoring Sellers’ Wishes, CHARLESTON GAZETTE, Oct. 5, 1966, at 13; CHOOSE Director Employed, CHARLESTON GAZETTE, June 20, 1966, at 6; Minister, Others Get Help Offer, CHARLESTON GAZETTE, Oct. 14, 1966, at 19.

<sup>299</sup> CHOOSE Will Close Office, CHARLESTON DAILY MAIL, May 8, 1967, at 13.

<sup>300</sup> BUILD A BETTER AM. COMM., *supra* note 236.

<sup>301</sup> Don Marsh, *The One-Man Gang of Coal Branch Heights*, GAZETTE-MAIL, Oct. 31, 1965, at 54.

<sup>302</sup> Ed Peeks, *Commentary: Jay Didn’t Make the Water Flow*, CHARLESTON GAZETTE, Aug. 28, 2000, at P2D; Sandy Wells, *Interviews: “Today, I’m a Proud Man”*, CHARLESTON GAZETTE, Apr. 7, 2003, at 1C; ; *Pipelines Are Again Sabotaged*, CHARLESTON GAZETTE, Dec. 17, 1968, at 13.

<sup>303</sup> K. W. Lee, *Rev. Banks Ouster May Be Petitioned*, CHARLESTON GAZETTE, Aug. 7, 1965, at 3.

city's NAACP followed court orders to stop picketing Rock Lake pool for barring Blacks;<sup>304</sup> UNION led the efforts to continue protests and brought C.T. Vivian to Charleston for the occasion.<sup>305</sup> The local NAACP decided to not join the Southern Christian Leadership Conference whereas UNION did.<sup>306</sup> UNION and TIC were both independent from the city's established power structure, allowing them to take on powerful landlords and protest Black City Council representatives who they felt did not adequately improve Black living conditions.<sup>307</sup>

TIC was a sub-group of an Office of Economic Opportunity organization called Action for Appalachian Youth, which was meant to bring about community organizing in Appalachia.<sup>308</sup> TIC was also a constituent member of UNION.<sup>309</sup> It was organized by Black college graduates from the deep south who had been active in the civil rights movement.<sup>310</sup> Perhaps national tension, like the Watts uprising, or local conditions turned TIC into an active force by 1965. Like UNION, TIC's leadership was not part of Charleston's professional class; at the start it was led by Spencer Burton, a house painter.<sup>311</sup>

UNION and TIC actively pursued housing problems faced by Black people in the city. They worked to establish communication between tenants and landlords.<sup>312</sup> They helped tenants report dilapidated properties to the city's code enforcement, and they used public pressure tactics to actually require code enforcement to work in the Triangle; the Building Inspector had stopped doing inspections in the area in the early 1960s.<sup>313</sup> They planned rent strikes on problem landlords and pressured CHA's pace on integration and disparate treatment of tenants.<sup>314</sup> They joined other neighborhood organizations, like the Inter-City Council of Neighborhoods to demand a fair share of city services and more tenant

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<sup>304</sup> *NAACP Refusing Protest Sanction*, CHARLESTON GAZETTE, Aug. 14, 1965, at 11.

<sup>305</sup> K. W. Lee, *Aide to King Will Lead Rock Lake Pool Protest*, CHARLESTON GAZETTE, Aug. 14, 1965, at 11.

<sup>306</sup> K. W. Lee, *UNION Votes to Join Fight Against Slums, Shumlords*, CHARLESTON GAZETTE, Sept. 21, 1965, at 2; *NAACP Panel Will Discuss UNION Link*, CHARLESTON DAILY MAIL, Sept. 2, 1965, at 36.

<sup>307</sup> Lee, *supra* note 303.

<sup>308</sup> Kearney, *supra* note 211.

<sup>309</sup> *Harris Quietly Shows Interest in New Era*, CHARLESTON GAZETTE, Jan. 19, 1966, at 13.

<sup>310</sup> *Robinson Resigns from AAY Post*, CHARLESTON DAILY MAIL, Aug. 25, 1965, at 5.

<sup>311</sup> Anna Sale, *Campaigning To Save the Triangle District: Urban Policy, Race, and Resistance Organizing in Charleston, West Virginia 1965–1972* (June 2003) (B.A. thesis, Stanford University) (on file with author).

<sup>312</sup> *Mayor Plans Walk in Triangle Area*, CHARLESTON GAZETTE, Sept. 25, 1965, at 13.

<sup>313</sup> *Inspections Will Continue on West Side*, CHARLESTON DAILY MAIL, Oct. 6, 1965, at 22.

<sup>314</sup> K. W. Lee, *Rent Strike Eyed To Force Housing Improvement*, CHARLESTON GAZETTE, Sept. 11, 1965, at 9.

protections.<sup>315</sup> They conducted their own surveys of housing conditions; and they cultivated relationships with newspaper reporters to more effectively pressure city officials, landlords, and the public into caring about the living conditions of Black people in the city.<sup>316</sup>

TIC and UNION's efforts to improve housing conditions in low-income Black neighborhoods were dulled by landlords' exploitative power under segregation. TIC received threats from landlords that if residents continued making building inspection reports, the landlords would simply raze their properties and not rebuild.<sup>317</sup> Mayor Shanklin acknowledged as much on a tour of the Triangle he took with TIC and went on the record supporting an open occupancy ordinance in the city, which would allow Black renters to seek housing outside proscribed areas.<sup>318</sup> This suggestion was supported by all civil rights groups in the area in the run-up to a vote on a civil rights ordinance in 1966.<sup>319</sup> By December of that year, the council claimed it needed more time to work out the details.<sup>320</sup> The demand to end segregation would come sooner to West Virginia municipal governments than they would have preferred, as more Black neighborhoods were scheduled for demolition by public works projects.

### G. Fair Housing in the Context of Relocation

The first open housing ordinances in West Virginia were passed not out of the goodwill of City Council majorities, but in response to Black protest about displacement without adequate relocation. Despite eliciting charged reactions from political opponents, it is not quite clear how effective this legislation was in desegregating neighborhoods.

It seems that the city of Montgomery passed the first Fair or Open Housing ordinance in West Virginia.<sup>321</sup> The measure was passed quickly and unanimously after Black residents showed up at the City Council to demand it.<sup>322</sup> Three years prior, the West Virginia Institute of Technology ("Tech") had

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<sup>315</sup> Oral history of Carolyn Tillman, *supra* note 242.

<sup>316</sup> See, e.g., K. W. Lee, *supra* note 200, at 13.

<sup>317</sup> Lee, *supra* note 306.

<sup>318</sup> K. W. Lee, *Mayor Ready To Help in Triangle*, CHARLESTON GAZETTE, Sept. 28, 1965, at 1-2.

<sup>319</sup> Robert D. Horan, *City Hall Reports Rights Opposition*, CHARLESTON GAZETTE, Apr. 30, 1966, at 1-2.

<sup>320</sup> *Council Urged To Enact New Housing Code*, CHARLESTON DAILY MAIL, Dec. 20, 1966, at 7.

<sup>321</sup> "Fair" and "Open" housing were often used interchangeably, but sometimes "Fair" meant the law only stopped professional housing brokers from discriminating, not owners selling or renting their own properties. SATTER, *supra* note 15.

<sup>322</sup> K. W. Lee, *Housing Is Opened, but Houses Few*, CHARLESTON GAZETTE, Nov. 3, 1967, at 40.

displaced 171 residents, many who were Black, elderly, and low-income, without providing any relocation housing.<sup>323</sup> Black residents appeared before the council, upset and organized, because the state road (W. Va. 61) and Tech were again expanding into the all-Black Fayette Pike part of town, destroying more homes without providing any relocation housing in the tiny Fayette County community.<sup>324</sup>

According to Black residents set for displacement by Tech's expansion, the college considered the neighborhood a slum and found Black-owned property easier to acquire.<sup>325</sup> The attitude that Black-owned space was tantamount to physical blight, present in state and federal decisions about housing for decades at this point, had allowed project planners to drive down condemnation costs and shirk relocation responsibilities. As one Black Montgomery resident put it, "[t]his area is not technically a slum . . . and the use of the term only serves to depreciate the value of the residents' property."<sup>326</sup> Their advocacy was effective, and the following year, the college agreed to not displace further residents before building relocation housing.<sup>327</sup>

Charleston first attempted to pass a civil rights ordinance containing an open housing ordinance in May 1966.<sup>328</sup> It was vociferously opposed by the Kanawha Valley Board of Realtors, save for a few holdouts Realtors like Calvert Estill of the firm Estill & Greenlee, Inc.<sup>329</sup> Another principal of that firm, Paul Greenlee, opposed it.<sup>330</sup> In the months following, the City Council's opposition remained entrenched. In early 1967, only 2 of 24 City Council members voted to endorse a state-wide open housing bill under consideration at the legislature.<sup>331</sup>

In October 1967, Charleston attempted once more to pass an open housing ordinance. Black at-large council member, Dr. Virgil Matthews

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<sup>323</sup> K. W. Lee, *Montgomery Voting Open Housing To Aid the Displaced*, CHARLESTON GAZETTE, Oct. 12, 1967, at 5.

<sup>324</sup> *Id.*

<sup>325</sup> Sheri O'Dell, *Negro Father Balks at Displacement*, CHARLESTON GAZETTE, Dec. 13, 1967, at 36.

<sup>326</sup> Sheri O'Dell, *Montgomery Negroes Ask for Relocation*, CHARLESTON GAZETTE, Jan. 15, 1969, at 17.

<sup>327</sup> Sherri O'Dell, *Expansion at Tech To Wait on Housing*, CHARLESTON GAZETTE, Dec. 14, 1968, at 16. The relocation housing eventually built was constructed by the same contractors involved with a bribery scandal involving assassination attempts that would overtake the state's FHA office in the early 1970s. *Housing Project to Provide Taxes*, DAILY MAIL, May 17, 1969, at 11.

<sup>328</sup> Charlie Connor, *Continuing Fight for Civil Rights Ordinance Vowed*, CHARLESTON DAILY MAIL, May 17, 1966, at 1–2.

<sup>329</sup> Tom Cummings, *Realtors Say Definite "No" to Ordinance*, CHARLESTON DAILY MAIL, Apr. 28, 1966, at 25.

<sup>330</sup> *Id.*

<sup>331</sup> Meeting Minutes of the Charleston City Council (Feb. 6, 1967) (on file with author).

submitted a minority report to the whole council lambasting its failure to pass open housing.<sup>332</sup> He told of how he “tried for five years to purchase property in a nice neighborhood” with substantial funds for a down payment.<sup>333</sup> The Council, along with the new Mayor, Elmer Dodson, voted down an Open Housing ordinance 17-8 and then passed an unenforceable resolution supporting the idea of equal housing access.<sup>334</sup>

Displacement weighed on the minds of open housing proponents. The state’s demolition of integrated California Apartments to make room for new office space lit the spark that would lead to the ordinance’s passage. Immediately following the council’s decision to vote down open housing, Berley Geiger, a porter at the Greyhound Bus Station and resident of California Apartments, interrupted the ongoing meeting to call, “[a]ll for open housing, follow me.”<sup>335</sup> About 50 self-identified “militant black supporters” left council chambers for the Donally Street Playground, where they started planning a response.<sup>336</sup> Within ten days, the *Gazette* reported the “biggest civil rights rally and march” in the city’s history, “orderly and peaceful throughout . . . [an] almost festive event.”<sup>337</sup>

Passage of the ordinance came under a penumbra of violence and unrest, as Black elected officials and organization heads told the City Council that “they cannot be held responsible for future events” after the ordinance’s defeat.<sup>338</sup> Carl Glatt, then director of the West Virginia Human Rights Commission (“WVHRC”), wrote to an observer that

the “young Turks” among the Negroes . . . are pledged to violent direct action should the city council fail to pass an effective fair housing ordinance. Blame for any violent direct action will be attributed by the mass media to the “young Turks,” when in reality the blame and the causes of the racial problems throughout the nation stem from the lack of effective protective human rights legislation which would make unnecessary this violent direct action.<sup>339</sup>

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<sup>332</sup> Meeting Minutes of the Charleston City Council (Oct. 2, 1967) (on file with author).

<sup>333</sup> *Id.*

<sup>334</sup> *Id.* at 452-53.

<sup>335</sup> Charlie Conner, *Negro Leaders Consider Influence Eroded After Open Housing Defeat*, CHARLESTON DAILY MAIL, Oct. 3, 1967, at 13.

<sup>336</sup> H. Ray Evans, *Council Spurns Open Housing: Irked Backers March*, CHARLESTON GAZETTE, Oct. 3, 1967, at 1-2.

<sup>337</sup> K.W. Lee, *Racially Mixed Group Marches For “Open City”*, CHARLESTON GAZETTE, Oct. 10, 1967.

<sup>338</sup> Conner, *supra* note 213.

<sup>339</sup> Letter from Carl Glatt to Deborah Powell (Oct. 25, 1967) (on file with author).

Geiger explained the increased militancy of African American protesters in Charleston as a byproduct of school integration; younger Black people expected equal treatment.<sup>340</sup>

Popular support grew in the weeks following the protest. The city's Ministerial Alliance endorsed the bill and preached about it to its congregations.<sup>341</sup> The city's Veterans of Foreign Wars, full of Vietnam and Korean veterans, also endorsed it.<sup>342</sup> On November 6, 1967, following weeks of public manifestations of support, Mayor Dodson and a sufficient number of council members changed their positions and passed the ordinance.<sup>343</sup>

Like in Montgomery, demolition of Black housing without adequate relocation led to Charleston's open housing ordinance. Charleston's housing, however, faced problems beyond those soluble through an anti-discrimination law. In explaining their votes for the Open Housing ordinance, some council members said the ordinance would be needed to avoid problems during the mass relocations that would take place through the Charleston Urban Renewal and highway construction plans planned for the city's Triangle District; others pointed out that even with the ordinance, relocation supply was insufficient.<sup>344</sup>

The outcome to the relocation of California Apartments, the complex set for demolition by the state, shows some of the difficulties of mass relocation. Geiger said the apartment was the first decent home he had lived in, with good bus service to his and his wife's workplaces and without rats or roaches.<sup>345</sup> He spoke for other tenants, and the many displaced through other public works projects in the city, when he declared that they would not "run from one ghetto to another."<sup>346</sup> Months after passage of the open housing ordinance, Geiger called the state's relocation process "a 'get-lost' relocation method."<sup>347</sup> One tenant moved out of the state after multiple instances of showing up to meet landlords he had spoken with over the phone who then made excuses about not being able to rent to him when they saw that he was Black.<sup>348</sup> Geiger and council member Virgil Matthews soon drew ire from city officials by complaining to the Federal Government that the city's workable plan did not meet standards because it did

<sup>340</sup> *March Seen Giving Negroes New Hope*, CHARLESTON GAZETTE, Oct. 16, 1967, at 3.

<sup>341</sup> James Haught, *Ministers Preach Open Housing*, CHARLESTON GAZETTE, Oct. 9, 1967, at 12; Meeting Minutes of the Charleston City Council (Oct. 16, 1967) (on file with author).

<sup>342</sup> *Id.*

<sup>343</sup> Meeting Minutes of the Charleston City Council (Nov. 6, 1967) (on file with author).

<sup>344</sup> *Id.*

<sup>345</sup> K. W. Lee, *Riots Last Thing We Want*, CHARLESTON GAZETTE, Oct. 3, 1967, at 2; *If Rights of All Mean Anything, Open Housing Will Be Embraced*, CHARLESTON GAZETTE, Oct. 27, 1967, at 13; CHARLESTON GAZETTE, Oct. 10, 1967.

<sup>346</sup> *Id.*

<sup>347</sup> *Relocation Help Asked of Governor*, CHARLESTON GAZETTE, Dec. 7, 1967, at 3.

<sup>348</sup> *Capitol Housing Refugee Leaving State—Disgusted*, CHARLESTON GAZETTE, Mar. 7, 1968, at 41.

not account for the more than 100 people displaced from California Apartments, thus halting federal funding to the city.<sup>349</sup>

Tension only increased in Charleston in the following years, as new and established civil rights groups attempted to halt highway construction and urban renewal from destroying the Triangle District before adequate relocation housing was built. Three separate and only occasionally coordinated projects—West Virginia Water Company’s new filtration plant, two interstates, and urban renewal—removed most structures in the Triangle.<sup>350</sup> As the scale of the effects of interstate development became apparent in 1967, more confrontational protests took place on the streets of Charleston, as well as boycotts of downtown businesses which supported the projects.<sup>351</sup> Some activist groups like Movement for Total Black Unity (“MOBOTU”) began a “tent city” on vacant, cleared property, meant to highlight the injustice of the clearance program, while TIC and other groups used every public hearing they could to attack plans that did not include Triangle relocation housing.<sup>352</sup>

Pressure from civil rights groups and sympathetic elected officials yielded evidence that the city’s projects constituted “Black removal.” A City Council investigation found that CHA had stalled in obtaining funds for new public housing to absorb the relocation shock.<sup>353</sup> A 1968 report by the Municipal Planning Commission noted continued fear in white neighborhoods “that allowing Negroes into neighborhoods . . . [would] result either in high vacancies or total Negro occupancy.”<sup>354</sup> Relocation of unwed mothers and large families proved difficult; some residents were moved from one demolition area into another.<sup>355</sup> At least one elderly Triangle resident died during such moves.<sup>356</sup>

In August 1968, TIC invited “advocate-planner” Peter Abeles of the New York firm Abeles & Schwartz to review the city’s planning commission reports, the state’s highway plan, and the urban renewal authority’s redevelopment plan.<sup>357</sup> Abeles found that the existing plans placed more priority on redeveloping the Triangle for commercial use than re-housing the people displaced.<sup>358</sup> Abeles constructed an alternative plan for the Triangle that would

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<sup>349</sup> See, e.g., *Matthews Warns of Consequences*, CHARLESTON GAZETTE, Mar. 1, 1968, at 24.

<sup>350</sup> Sale, *supra* note 311, at 2.

<sup>351</sup> Sheri O’Dell, *City To Get “Thank You” Petition, Triangle Plans Boycott of Downtown Merchants*, CHARLESTON GAZETTE, July 11, 1970, at 1.

<sup>352</sup> Sale, *supra* note 311, at 88–89.

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

<sup>355</sup> S. REP. NO. 91, at 1028 (1970); *Mother, Brood of 8 Hunt Home*, CHARLESTON GAZETTE, Jan. 9, 1969, at 3.

<sup>356</sup> *Id.*

<sup>357</sup> Ellen Perry Berkeley, *Protest in Progress*, 1969 ARCHITECTURAL F. 47, 47–55.

<sup>358</sup> *Id.*



preserve mixed-income, residential space by rehabilitating some houses and building new, low-cost, owner-occupied units as well.<sup>359</sup> The obstinate Charleston Urban Renewal Authority refused most of TIC's requests.<sup>360</sup> National press began coming to Charleston to report on the controversy, while Triangle residents, TIC, and councilman Virgil Matthews traveled to Washington, D.C., to deliver testimony before Senator Jennings Randolph and to make their case to federal transportation officials.<sup>361</sup>

Controversy over relocation in the Triangle reached the Supreme Court of the United States as tension continued to build on the streets. Charleston's Legal Aid Society represented TIC in a lawsuit against the State Road Commission ("SRC") that claimed SRC lacked a comprehensive relocation plan, as required by the 1968 Amendments to the Federal Highway Act.<sup>362</sup> The district court decided that because the project had been planned and started before the new amendments, SRC did not need a comprehensive relocation plan.<sup>363</sup> The district court did not consider the civil rights claims put forward by plaintiffs because the demolition of the neighborhood did not, as "its primary thrust," intend to violate Triangle residents' civil rights.<sup>364</sup> SRC prepared to resume demolition while Triangle protests continued, but Federal Transportation Secretary John Volpe personally intervened to halt demolition.<sup>365</sup>

On appeal, the Fourth Circuit Court of Appeals upheld the district court's ruling that SRC was not required to provide a comprehensive relocation plan.<sup>366</sup> SRC resumed construction and encouraged Triangle tenants and homeowners to relocate.<sup>367</sup> Protests continued. On July 8, 1970, around 50 protesters blocked bulldozers and clashed with police.<sup>368</sup> The following day Secretary Volpe again halted demolition, citing an internal review by the Department of Transportation.<sup>369</sup> The review showed that there was insufficient relocation housing for displaced Triangle residents and that an alternative route for the highway proposed by Abeles had advantages over the route that went through

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<sup>359</sup> *Id.*

<sup>360</sup> Sale, *supra* note 311, at 60–62.

<sup>361</sup> Federal Highway Act of 1970.

<sup>362</sup> Triangle Improvement Council v. Richie, 402 U.S. 497 (1971).

<sup>363</sup> Sale, *supra* note 311, at 85.

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> *Field's Triangle Decision Upheld*, CHARLESTON GAZETTE, May 16, 1970, at 1.

<sup>367</sup> Sale, *supra* note 311, at 86.

<sup>368</sup> James A. Haught, *Triangle Razing Protest; Dozen Arrests Smash Barricade of Bodies*, CHARLESTON GAZETTE, July 9, 1970, at 1.

<sup>369</sup> Patrick McClintock & Kay Michael, *Cease Demolition, U.S. Orders State in Triangle*, CHARLESTON GAZETTE, July 10, 1970, at 1.

the Triangle.<sup>370</sup> Governor Arch Moore, however, ordered that demolition resume.<sup>371</sup>

By the time the case was appealed to the Supreme Court of the United States in *Triangle Improvement Council v. Ritchie*,<sup>372</sup> most of the displacement had taken place; residents had moved or been moved out of the Triangle. Charleston's open housing ordinance came up in the oral argument phase, as SRC argued that because Charleston passed an open housing law in 1967 and the U.S. passed the Fair Housing Act in 1968, that there was no longer a race-based barrier to Black people seeking housing in Charleston, so relocation housing would not be a problem.<sup>373</sup> This argument did not appear in the concurrence or dissent.<sup>374</sup> The Court voted 5-4 to deny certiorari, noting that the 1968 Highway Act Amendments had already been replaced by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and that TIC's requested remedy had changed from SRC adopting a comprehensive relocation plan to instead verifying that those relocated had been relocated according to the standards guaranteed by federal law.<sup>375</sup>

In the following five years, demolition removed nearly all housing in the Triangle. In the mid-1970s, Charleston's Urban Renewal Authority hired more relocation staffers, and some Triangle residents were relocated into decent accommodations elsewhere in the city.<sup>376</sup> Many others, tired of being moved multiple times, left the state for industrial centers like Detroit, Cincinnati, or Columbus.<sup>377</sup> Even after the passage of open housing laws, prejudice was a roadblock to relocation. Some landlords were reluctant to accept tenants relocated from the Triangle, and relocation staffers skipped over certain all-white rural communities outside of Charleston, out of fear for the safety of the Black displaced.<sup>378</sup> In some of the same communities, Ku Klux Klan rallies were being hosted in the mid-1970s in response to the Kanawha Textbook controversy.<sup>379</sup>

The Triangle was not the only community displaced by urban renewal and highway construction. Years before, Black residents in Wheeling protested

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<sup>370</sup> *Id.*

<sup>371</sup> Sale, *supra* note 311, at 91.

<sup>372</sup> 402 U.S. 497 (1971).

<sup>373</sup> Transcript of Oral Argument at 21, *Triangle Improvement Council v. Ritchie*, 402 U.S. 497 (1971) (No. 712).

<sup>374</sup> *See TIC*, 502 U.S. 497.

<sup>375</sup> *Id.* (Harlan, J., concurring).

<sup>376</sup> Oral History from Carl Foster (on file with author, to be stored at the West Virginia Archives and History Library).

<sup>377</sup> *Id.*

<sup>378</sup> *Id.*; Oral History from Carol Tillman, *supra* note 242.

<sup>379</sup> CAROL MASON, *READING APPALACHIA FROM LEFT TO RIGHT* 51 (Cornell Univ. Press ed. 2009).

against urban renewal and highway construction that sought to take “the backbone of the community out and put businesses in and other things in.”<sup>380</sup> Yet after the Triangle’s widely publicized destruction, communities in other parts of the state came to view urban renewal suspiciously. A community organizer in Huntington advised residents to oppose urban renewal proposals in the 16th Street neighborhood of Huntington, warning that the program in Charleston was essentially “Black removal.”<sup>381</sup>

Similar concerns about displacement without adequate relocation motivated the “I-79 Protesting Organization” in Osage, part of Scott’s Run, near Morgantown.<sup>382</sup> Originally formed to re-route the highway, the group shifted its goal to obtaining higher relocation payouts for the 52 households displaced by construction.<sup>383</sup> Lawyers from the West Virginia NAACP and the North-Central West Virginia Legal Aid Society helped the residents obtain significantly higher offers for home values and relocation payments, while also raising one part of the highway to preserve a local route.<sup>384</sup>

#### H. Fair Housing in the Mountain State

Charleston’s Fair Housing ordinance contained several exceptions that exempted most housing with fewer than five units, but it still drew considerable ire. Opposition to open housing in Charleston was veiled in the language of property rights and appeals to traditional American values of segregation. The group “Open Housing Opponents” brought 26 people together and attempted to make Open Housing a ballot issue following its passage by the City Council.<sup>385</sup> The City’s Board of Realtors called the measure “Forced Housing.”<sup>386</sup> One council member asserted, “buildings don’t necessarily make slums, people make slums.”<sup>387</sup> Mrs. Mae Luddy of the John Birch Society was a vocal opponent of

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<sup>380</sup> Transcript of Interview with Diane Bell, BERA COLL. SPECIAL COLLECTIONS & ARCHIVES, [https://bera.access.preservica.com/uncategorized/IO\\_af626b5f-c063-4c7e-b205-09e1dfd975d4/](https://bera.access.preservica.com/uncategorized/IO_af626b5f-c063-4c7e-b205-09e1dfd975d4/) (last visited Oct. 6, 2020).

<sup>381</sup> Tod Sedgewick, *Black Community Expresses Fear of Dislocation*, HERALD DISPATCH, Nov. 11, 1974.

<sup>382</sup> *Osage Aid Office*, DOMINION NEWS, July 31, 1969, at 16.

<sup>383</sup> *NAACP Confirms Support of Osage*, DOMINION NEWS, Sept. 14, 1969, at 7; *Tumultuous Year for Osage Protesting Organization*, MORGANTOWN POST, Mar. 18, 1970, at 13.

<sup>384</sup> Stan Cavendish, *Osage Protesting Group Vows Housing or No Road*, DOMINION NEWS, Sept. 12, 1969, at 9; Mike Connell, *SRC Property Buying Discussed*, DOMINION NEWS, Oct. 3, 1969, at 13.

<sup>385</sup> Sandra Grant, *Objection Voiced to Open Housing*, CHARLESTON GAZETTE, Oct. 27, 1967, at 19.

<sup>386</sup> Editorial, *If Rights of All Mean Anything, Open Housing Will Be Embraced*, CHARLESTON GAZETTE, Oct. 27, 1967, at 26.

<sup>387</sup> *Open Housing Passes*, CHARLESTON DAILY MAIL, Nov. 7, 1967, at 2.

Open Housing, declaring that “a property owner should keep the right to dispose of property the way he wishes, without a law to force him to sell to a Negro,” before blaming African American lawyers for not making “efforts to provide housing for Negroes.”<sup>388</sup> Mae Luddy wrote that Earl Warren should have been impeached; integration and civil rights were the causes of unrest in American cities; and, “I do not believe in integration . . . they should live in their part of town and we should live in our part of town.”<sup>389</sup> One 18-year-old Charleston resident wrote the Council,

[t]he civil rights movements [sic] idea of “civil rights” is indeed puzzling to me . . . they should desire their rights but trample on the rights of . . . property owners . . . . Don’t make Charleston a Soviet Russia devoid of the God-given freedom all Americans can boast of . . . as a white citizen, if that means anything anymore, I have the right to beg.<sup>390</sup>

In the city, there were possibilities to organize against these prejudicial positions. Across the state, it proved more difficult, as West Virginia failed to pass legislation outlawing housing discrimination until 1971.<sup>391</sup>

Until 1967, West Virginia’s state government made only superficial efforts to discourage racial discrimination in housing, including Governor Matthew Neely’s 1944 Commission on Human Relations that dissolved in 1946 without having done more than “read and discuss *An American Dilemma* by Gunnar Myrdal” and a 1963 proclamation against discrimination from Governor William Wallace Barron, to which one Black home seeker in Charleston told the *Gazette* “neither the real estate agents or the people I dealt with in looking for a house paid any attention.”<sup>392</sup>

The administrative origins of the state’s anti-discrimination law lie in the history of the WVHRC. In 1961, the state legislature passed House Bill 115, establishing the WVHRC in the state to “encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and [to] strive to eliminate all discrimination in employment and

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<sup>388</sup> Meeting Minutes of the Charleston City Council (Oct. 2, 1967) (on file with author). Luddy would later take out a full-page ad in the *Gazette* railing against Open Housing, Vietnam protesters, people protesting Apartheid, and textbooks that taught “revolution,” a prelude to the textbook controversy that would overtake Charleston in the 1970s. *Open Housing Legality Ruling Asked by Smith*, CHARLESTON GAZETTE, Oct. 5, 1967; see also Charlie Connor, *Council Declared “Preacher-Scared” on Housing Issue*, CHARLESTON DAILY MAIL, Oct. 21, 1967, at 2.

<sup>389</sup> *Issue Far from Dead, Housing Talk of Town*, CHARLESTON GAZETTE, Oct. 4, 1967.

<sup>390</sup> Meeting Minutes of the Charleston City Council (Oct. 16, 1967) (on file with author).

<sup>391</sup> W. VA. HUM. RTS. COMM’N, ANNUAL REPORT 1970-1972 39.

<sup>392</sup> *Housing Talk of Town*, *supra* note 389; Douglas Smith, *The West Virginia Human Rights Commission During the Gavett-McKinney Era, 1961-1966* 29 (1975) (Ph.D. dissertation, West Virginia University) (on file with author).

places of public accommodation.”<sup>393</sup> The effort received praise from labor leaders and the state NAACP, though others criticized it for its limited scope and not getting “to the problem of fair employment practices and discrimination in housing.”<sup>394</sup>

Showing the depth of ingrained racist attitudes in the state, the WVHRC’s selection committee corresponded about how the WVHRC should not hire an African American or Jewish Director, hoping “that we can come up with a pleasant-looking, Anglo-Saxon, male, [sic] Unitarian, who is eligible to belong to the [Sons of the American Revolution], but who has enough sense not to . . . [or an] Anglo-Saxon with the heart of a Jew.”<sup>395</sup> Despite this, the WVHRC was effective in gathering reports on the degree of segregation and discrimination in West Virginia, encouraging the Governor to declare a non-discrimination policy in state employment that took effect in 1962, and publicizing discriminatory conduct through public hearings and press releases.<sup>396</sup> It was unable to take any legally binding action against discrimination until well after the passage of the 1964 Federal Civil Rights Act.

The WVHRC did what it could to record instances of housing discrimination and attempt to negotiate with communities and real estate institutions. It showed up in Weirton following an appeal to rehouse seven Black families displaced by public construction went unheeded.<sup>397</sup> It tried to warn businesses that Black professionals in Parkersburg and the Northern Panhandle had turned down lucrative job offers upon being told that they would not be permitted to reside in the communities where they would work.<sup>398</sup> It tried to spread the story of a Black nurse looking for an apartment in Charleston who was told by her leasing agent that the bank which owned the property did not like to rent to Black people.<sup>399</sup> And that of a Black woman looking for an apartment in Wheeling who was asked for her race by realty firms so they could direct her to houses in “ghetto-like conditions.”<sup>400</sup> And the same woman’s experience of having a deposit on an apartment canceled by a landlord who told her that another

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<sup>393</sup> 1961 W. Va. Acts 135 § 1 (Reg. Sess.).

<sup>394</sup> Smith, *supra* note 392, at 32.

<sup>395</sup> *Id.* at 58–59.

<sup>396</sup> *Id.* at 70.

<sup>397</sup> *Fair Housing Code Asked by Weirton Group*, WEIRTON DAILY TIMES, July 14, 1966, at 9; *7 Negro Families Seek Houses Here*, WEIRTON DAILY TIMES, Sept. 23, 1966, at 18.

<sup>398</sup> W. VA. HUMAN RTS. COMM’N, ANNUAL REPORT 1968–69 4–5 (on file with the West Virginia and Regional History Center).

<sup>399</sup> Meeting Minutes of the W. Va. Human Rights Commission (July 13, 1967) (on file with the West Virginia and Regional History Center).

<sup>400</sup> *West Virginia Register*, Sept. 29, 1967, (reprinting the speech of Susan Gillespie first published in the *West Virginia Register* Feb. 24, 1967 issue) (on file with the West Virginia and Regional History Center).

family in the building “threatened to move” if presented with Black neighbors.<sup>401</sup> The leasing officer of Kanawha Valley Bank told a WVHRC investigator that he “fe[lt] mixing Negroes and whites didn’t work” and insisted to the WVHRC, “[y]ou know that.”<sup>402</sup> Yet without an enforceable anti-discrimination law, there was not much the agency could do to stop these actions or change these attitudes.

After a controversy with the state’s NAACP, the group’s first director Howard McKinney was replaced by Carl Glatt in 1966.<sup>403</sup> Tension about race across the country, and momentum from national civil rights victories, led the WVHRC began to push for expanded powers.<sup>404</sup> Fair Housing seemed possible: the WVHRC reported in internal documents that real estate representatives, home builders, architects, and home-financing institutions at the Governor’s conference on housing supported a Fair Housing law.<sup>405</sup>

This confidence seemed to be misplaced. The much smaller task of granting the WVHRC power to enforce any anti-discrimination law proved controversial. In 1967, the agency sought to pass House Bill 821, which would give the WVHRC power to issue subpoenas and cease-and-desist orders to entities determined to be discriminating based on protected class in public accommodations, employment, and housing.<sup>406</sup> The bill passed by a wide margin at the request of 30-year veteran of the House Delegate, Wilfred Dickerson, one of the state’s few Black Delegates, who requested no dissenting votes.<sup>407</sup> The Bill’s Fair Housing sections proved too ambitious however, as might be expected from the remarks of one of the bill’s supporter in the House, Delegate George Woo: “The [racial] minority doesn’t want to move into a neighborhood where they are not really wanted.”<sup>408</sup> The Senate removed the Fair Housing provision and barely passed the rest. An amendment to strip all enforcement powers from the bill failed on a 17–17 vote on the last day of session, with all Republicans and some Democrats from rural areas in favor of weakening human rights protections.<sup>409</sup>

A bill explicitly permitting municipalities to pass and enforce Fair Housing ordinances passed in 1968, with Delegate Dickerson noting that the degree of integration and racial harmony then already existing in McDowell

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<sup>401</sup> *Id.*

<sup>402</sup> Meeting Minutes of the W. Va. Human Rights Commission (July 13, 1967) (on file with the West Virginia and Regional History Center).

<sup>403</sup> K. W. Lee, *Feud-Weary State NAACP Elects Henderson President*, CHARLESTON GAZETTE-MAIL, Sept. 18, 1966, at 12C.

<sup>404</sup> Mountain State Reflector Newsletter, *supra* note 291.

<sup>405</sup> *Id.*

<sup>406</sup> W. VA. HUM. RTS. COMM’N, ANNUAL REPORT iii (1966–67).

<sup>407</sup> H. JOURNAL, 58th Cong., Reg. Sess. 2013 (W. Va. 1967).

<sup>408</sup> *Id.*

<sup>409</sup> S. JOURNAL, 58th Cong., Reg. Sess. 2003, 2007–08, 2025–26 (W. Va. 1968).

County, particularly in Kimball and English.<sup>410</sup> Bills containing open housing provisions passed in the House in 1969 and 1970 only to die without much noise in Senate committees.<sup>411</sup> In 1971, three years after the passage of the Federal Fair Housing law, the West Virginia Legislature passed and Governor Arch Moore signed a state Fair Housing Act with similar protections to the federal version,<sup>412</sup> likely in order to be eligible for federal housing funds.

### *I. Fair Housing Enforcement*

The WVHRC and local press reported instances of housing discrimination following the passage of federal, state, and local laws. A real estate broker in Charleston reneged on renting to a Black couple in Charleston after neighbors pressured the broker.<sup>413</sup> In Huntington, Black couples reported real estate agents who refused to show them housing in white neighborhoods into the 1970s; they also reported difficulties obtaining home loans.<sup>414</sup> Discrimination's endurance in Huntington was well known; for example, a local newspaper reported that a disabled veteran seeking better housing had three strikes: "he has three children . . . he would most likely not qualify for bank financing for a home, and he is Negro, which severely restricts the areas in which he can rent or purchase housing."<sup>415</sup> Following a violently suppressed riot in Weirton over an interracial dancing ban at a youth club, Black groups in the city brought voice to the city's negligence toward public parks in all-Black neighborhoods.<sup>416</sup>

As anti-discrimination law came into effect, it did not automatically change racist attitudes. White tenants retaliated against a Charleston real estate broker who rented an apartment to a Black couple by canceling over \$800 in insurance policies the month the couple moved in.<sup>417</sup> In Huntington, a cross was burned on State NAACP leader Herbert Henderson's lawn when he moved into a predominantly white neighborhood in the 1970s.<sup>418</sup> Many West Virginia University faculty continued living in white-only Morgantown

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<sup>410</sup> H. JOURNAL, 402–3 (W Va. 1968).

<sup>411</sup> H. JOURNAL, 975–79, 982–84 (W. Va. 1970); S. JOURNAL (W. Va. 1970).

<sup>412</sup> Fair Housing Act, W. VA. CODE ANN. § 5-11A-1 (West 2020).

<sup>413</sup> W. VA. HUM. RTS. COMM'N., ANNUAL REPORT 1968–1969 4–5.

<sup>414</sup> Green, *supra* note 199.

<sup>415</sup> Russ Lilly, *Huntington's Slums: The "Legacy of Neglect"*, HERALD DISPATCH, Dec. 12, 1968.

<sup>416</sup> Executive Board of the Weirton Ministerial Association, *Open Letter on City's Racial Situation*, WEIRTON DAILY TIMES, Aug. 5, 1968, at 1–2; *Action Taken On 6-Point Program of Negro Group*, WEIRTON DAILY TIMES, Aug. 5, 1968, at 1–2.

<sup>417</sup> W. VA. HUM. RTS. COMM'N., *supra* note 413.

<sup>418</sup> NAACP Branch Asks Meeting, HERALD DISPATCH, Apr. 24, 1976.

neighborhoods.<sup>419</sup> Wheeling, Huntington, and Charleston all enforced municipal Fair Housing laws at least once in the first decade following passage in their municipal Human Rights Commissions.<sup>420</sup> In 1969, Charleston's Commission was "straining for business," though some real estate agents said that its presence meant that "[n]ow when people want to discriminate we don't have to do it for them."<sup>421</sup> By the 70s, other municipal human rights commissions also reportedly took few cases.<sup>422</sup>

Though not a matter of housing specifically, the WVHRC finally put to rest the question of racial restrictive covenants in property, present from *White v. White* to *Weberwood*, in the late 1960s. In the 1968 Kanawha County case *Sunset Memorial Park Co. v. Bernard F Hawkins*, African American carpenter Bernard Hawkins sought to purchase lots at the Sunset Memorial Park Cemetery in South Charleston.<sup>423</sup> After being given the runaround from various clerks, Hawkins filed a charge of discrimination with the WVHRC, which found that the cemetery had never sold any lots to African Americans or Jews.<sup>424</sup> Each deed to Sunset Memorial Park contained a restrictive covenant stating,

[t]his deed is made upon the express condition that the parcel of land hereby conveyed shall not, for a period of [50] years from and after this date, be sold, devised or conveyed to any person or persons having a perceptible strain of negro blood; nor shall any portion of said parcel of land be used for the burial of any deceased person known to have a perceptible strain of negro blood; and in the event of violation of this condition the title of

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<sup>419</sup> Letter from "Mrs. Sophistry P. Meddlesome" to John Williams, Chairman, West Virginia University Dep't Pol. Sci. (Mar. 15, 1968) (on file with the West Virginia and Regional History Center).

<sup>420</sup> See, e.g., *Landlady Fined \$100, Costs . . . "FAIR HOUSING" Gets First Test; Garden Convicts*, WHEELING NEWS REG., Oct. 4, 1968, at 1.

<sup>421</sup> *Only 2 Complaints in 15 Months Sent To Civil Rights Commission*, CHARLESTON DAILY MAIL, Feb. 7, 1969, at 15.

<sup>422</sup> Charles Gallaway, WHEELING NEWS REG., Feb. 4, 1971 at 17; Angela Green, *City HRC Is a Toothless Tiger*, HUNTINGTON ADVERTISER, Dec. 11, 1973.

<sup>423</sup> *Admit Negroes to Cemeteries*, CHARLESTON DAILY MAIL, Dec. 2, 1968, at 1.

<sup>424</sup> The clerk instructed him to speak with a salesman. Hawkins left a number at the desk for the salesman to call him at 2 p.m. that day. At 2:30 p.m., the salesman had not yet called, so Hawkins called the cemetery. The salesman he spoke to told him that he was not permitted to sell any plots until November. Hawkins asked to speak with a different salesman and was told that another salesman would not return until later in the month. Hawkins called the next day to speak with the first clerk he had spoken with; she said she had no information for him. West Virginia Human Rights Commission Complaint, *Bernard F Hawkins v. Sunset Memorial Park Co.* (Dec. 2, 1968) (on file with the West Virginia and Regional History Center) Kanawha County Circuit Court. Segregation was not limited to private cemeteries. The 1921 city code of Charleston prescribed separate racial sections in the city-owned Spring Hill cemetery. It is not clear when this changed. TOM DUNHAM, *CHARLESTON IN THE TWENTIETH CENTURY* 99 (Author House ed. 2002).



said parcel of land shall revert to and be vested in the party of the first part or its successor.<sup>425</sup>

In its hearing before the WVHRC, Sunset Memorial argued that it needed to restrict Mr. Hawkins from the cemetery to follow the rules of its own covenants.<sup>426</sup> The WVHRC ruled against the cemetery and issued it the first ever cease-and-desist issued by the WVHRC. In its appeal to the Kanawha County Circuit Court, Sunset Memorial claimed that the cemetery was vulnerable to “civil liability to the white purchasers of the lots.”<sup>427</sup> Its lawyer, Joseph Hereford, said that “some relatives would be highly upset if a Negro were buried [in Sunset Memorial] . . . I wouldn’t, but some people would.”<sup>428</sup> The Kanawha County Circuit Court noted that the recent Supreme Court decision, *Jones v. Alfred H. Mayer Co.*,

finally lays to rest any remaining expectation of the validity of any such restrictive covenants, regardless of how ingeniously contrived and artfully drafted . . . [and] the right of the respondent here has existed, by statutory enactment, for more than a hundred years, although such right has apparently not been fully recognized by the Supreme Court of the United States until very recently.<sup>429</sup>

Despite the Kanawha County Circuit Court’s decision, the WVHRC continued to receive complaints of discrimination at cemeteries. Blue Ridge Memorial Gardens in Beckley refused to allow non-white burials until seven months after the *Sunset Memorial* decision.<sup>430</sup> Its owner refused to integrate additional cemeteries he owned until he received further pressure from the WVHRC.<sup>431</sup> In late 1969, Potomac Valley Memorial Park in Keyser refused to bury Hugh Hollingsworth because he was black, citing deed restrictions to other lot owners.<sup>432</sup> After communication with the WVHRC, the cemetery eventually paid for Mr. Hollingsworth’s burial and re-interment.<sup>433</sup> The continued

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<sup>425</sup> *Sunset Memorial Park Co. v. Hawkins*, 20 (Kan. Cnty. Cir. W. Va. 1968).

<sup>426</sup> John Scott, *Cemetery Plans To Appeal Ruling*, CHARLESTON DAILY MAIL, June 21, 1968, at 6.

<sup>427</sup> K. W. Lee, *Sunset Cemetery Contesting Order To Accept Negroes*, CHARLESTON GAZETTE, June 21, 1968, at 21.

<sup>428</sup> *Id.*

<sup>429</sup> Jim Thorn, *Cemetery Integrated*, CHARLESTON DAILY MAIL, Dec. 2, 1968, at 14.

<sup>430</sup> Meeting Minutes of the W. Va. Human Rights Commission (July 10, 1969) (on file with the West Virginia and Regional History Center).

<sup>431</sup> Meeting Minutes of the W. Va. Human Rights Commission (Feb. 12, 1970) (on file with the West Virginia and Regional History Center).

<sup>432</sup> *Hollingsworth v. Potomac Valley Mem’l Park*, No. PA-66-70 (W. Va. 1969).

<sup>433</sup> *Id.*

intransigence of cemeteries shows the necessity of strong enforcement of anti-discrimination measures.

It is difficult to know the extent of WVHRC's housing discrimination enforcement and its exact effects over the years. Some housing cases reached the Supreme Court of Appeals of West Virginia, which set precedent that increased the costs of discrimination and expanded its definition. For instance, in *State Human Rights Commission v. Pauley*,<sup>434</sup> a case in which an interracial couple was denied housing upon the landlord finding out their identities, the court decided that limited compensatory damages could be awarded.<sup>435</sup> The court then expanded *Pauley* in *State Human Rights Commission v. Pearlman Realty Agency*,<sup>436</sup> in which a Black woman was denied the opportunity to view a house in Brooke County because of her race.<sup>437</sup> The court held that the WVHRC was within the law in its order for Pearlman to pay \$1,000 to the woman in "damages for the humiliation, embarrassment, emotional and mental distress, and loss of personal dignity."<sup>438</sup> In *West Virginia Human Rights Commission v. Wilson Estates, Inc.*,<sup>439</sup> a Marion County case in which a white woman was asked to vacate her apartment because Black friends helped her move in, the court ruled that housing discrimination included association-based discrimination as well.<sup>440</sup>

#### IV. CONCLUSION

In the last few decades, West Virginia has developed a national reputation as a very white and very prejudiced state. Deindustrialization, school consolidation, and changes in coal employment all contributed to the exodus of African Americans from the state, a phenomenon one observer noted as "economic genocide."<sup>441</sup> Studies of social media suggest persisting racial

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<sup>434</sup> 239 S.E.2d 145 (W. Va. 1977).

<sup>435</sup> *Id.* at 148.

<sup>436</sup> 239 S.E.2d 145 (W. Va. 1977).

<sup>437</sup> *See id.*

<sup>438</sup> *Id.* at 146.

<sup>439</sup> 503 S.E.2d 6 (W. Va. 1998).

<sup>440</sup> *Id.* at 15.

<sup>441</sup> Letter from Russell Van Cleve, Chairperson, West Virginia Hum. Rts. Comm'n, to West Virginia Hum. Rts. Comm'n (April 20, 1971) ("From 1950 to 1970, West Virginia's Negro population had decreased by 35.6% in contrast to an 11.8% decrease in white population . . . [F]or certain counties the percentage loss of blacks was from two, to three, to even four times greater than the percentage loss of white population. The West Virginia Human Rights Commission labeled this startling decrease in the Negro population of West Virginia 'economic genocide' based on diminishing employment opportunities in certain areas of the state which is a greater disadvantage for Negroes than for whites.") (on file with author).

prejudice in West Virginia.<sup>442</sup> Ugly, highly visible incidents of anti-Black racism point to the same conclusion: a county elected official referred to Michelle Obama as an “ape in heels”; a white man who murdered an unarmed Black teenager told police, “another piece of trash off the street.”<sup>443</sup> A legislative fact-finding mission from 2003 found significant disparities in health outcomes and public employment among Black West Virginians.<sup>444</sup> A 2010 study found the maternal mortality rate to be three times higher for Black West Virginians compared to whites, that Black West Virginians are more than twice as likely to rent and not own their home, to make less money, to have higher unemployment, to be incarcerated, and to have more of their children living below the poverty line.<sup>445</sup> A 2015 study found that Black students in West Virginia are significantly more likely to be suspended from school than white students.<sup>446</sup> These statistics suggest an environment that is still hostile to Black West Virginians.

Anti-discrimination language is now normal in the real estate industry, but the legacy of decades of segregation persists. Some argue that while anti-discrimination law has not repaired the enduring existence of segregation, enforcement in the decades following its passage, particularly federal enforcement, has cracked at least some of the structures, like an outwardly racist

<sup>442</sup> Sam Radbil, *Tolerance in America: The Most Racist Cities in the United States*, ABODO (Feb. 25, 2016), <https://www.abodo.com/blog/tolerance-in-america/>; see also David H. Chae, Sean Clouston, Mark L. Hatzenbuehler, Michael R. Cramer et al., *Association Between an Internet-Based Measure of Area Racism and Black Mortality*, PLOS ONE (Apr. 24, 2015), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0122963#pone-0122963-g001>.

<sup>443</sup> Lexi Browning & Lindsey Bever, “Ape in Heels”: W.Va. Mayor Resigns Amid Controversy Over Racist Comments about Michelle Obama, WASH. POST (Nov. 16, 2016), <https://www.washingtonpost.com/news/post-nation/wp/2016/11/14/ape-in-heels-w-va-officials-under-fire-after-comments-about-michelle-obama/>; see also Shawn Cabbagestalk, “Another Piece of Trash off the Street,” Teenager Killed After Bumping into 62-Year-Old, Authorities Say, WCBF NEWS 2 (Nov. 24, 2016), <https://www.counton2.com/news/another-piece-of-trash-off-the-street-teenager-killed-after-bumping-into-62-year-old-authorities-say/>.

<sup>444</sup> Larry L. Rowe, *West Virginia Race Relations at the Turn of the 21st Century: A New Historical Perspective and Legislative Study of Racial Disparities in Education, Health, Civil Rights, Criminal Justice, Economic Development and Employment*, 107 W. VA. L. REV. 637, 658–60 (2005).

<sup>445</sup> Scott Finn, *Four Reasons Black People Fill W. Va. Prisons*, W. VA. PUB. BROAD. (Apr. 21, 2016), <https://www.wvpublic.org/post/four-reasons-black-people-fill-wva-prisons#stream/0>; see also Pete Wilmoth, *Racial Disparities in West Virginia*, W. VA. CTR. ON BUDGET & POL’Y (Aug. 6, 2010), <https://wvpolicy.org/wp-content/uploads/2018/5/racialdisparities080610.pdf>; see also Cristina Novoa & Jamila Taylor, *Exploring African Americans’ High Maternal and Infant Death Rates*, CTR. FOR AM. PROGRESS (Feb. 1, 2018, 9:02 AM), <https://www.americanprogress.org/issues/early-childhood/reports/2018/02/01/445576/exploring-african-americans-high-maternal-infant-death-rates/>.

<sup>446</sup> Ryan Quinn, *Study: Black Students Disproportionately Punished in WV Schools*, CHARLESTON GAZETTE-MAIL (Aug. 25, 2015), [https://www.wvgazette.com/news/education/study-black-students-disproportionately-punished-in-wv-schools/article\\_8162bf11-7b0a-52d0-b817-3b222908488c.html](https://www.wvgazette.com/news/education/study-black-students-disproportionately-punished-in-wv-schools/article_8162bf11-7b0a-52d0-b817-3b222908488c.html).

real estate industry, that upheld segregation for decades before.<sup>447</sup> Others point to the Nixon administration's change in policy as tacit federal acceptance of segregation.<sup>448</sup> Nixon's Housing and Urban Development Secretary George Romney withheld federal grants to all-white suburban communities unless they agreed to build racially open low-income housing, but Nixon ended the effort and promised that the Federal Government would not attempt "economic integration."<sup>449</sup> A recent, gentler attempt by the Obama administration to try the former strategy through "Affirmatively Furthering Fair Housing" provisions was rolled back within a few years of introduction.<sup>450</sup> Physical separation between white and Black neighborhoods is still a dominant feature in American geography.<sup>451</sup>

In its current form, it seems that anti-discrimination law cannot by itself repair the lost wealth, confined upbringings, missed opportunities, and psychological superiority-inferiority issues produced by decades of segregation. Nor is it well-suited to address the intersection of poverty and race and the linked concern of mass incarceration. Public housing still provides decent housing to people who might not otherwise have it. Its placement is now more often a matter of which landlords accept Section 8 Housing Choice Vouchers and where eligibly priced rental units are.<sup>452</sup> About 20 states and dozens of municipalities now include "source of income" as a protected class, which bars landlords from refusing to accept Section 8 and similar vouchers.<sup>453</sup> West Virginia does not.<sup>454</sup> Bans on housing assistance to people who need it most, like the Charleston

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<sup>447</sup> See Jonathan Zasloff, *Between Resistance and Embrace: American Realtors, the Justice Department, and the Uncertain Triumph of the Fair Housing Act, 1968-1978*, 61 *How. L.J.* 69, 107 (2017).

<sup>448</sup> TAYLOR, *supra* note 5, at 93.

<sup>449</sup> *Id.*

<sup>450</sup> Press Release, U.S. Dep't of Hous. & Urb. Dev., Secretary Carson Terminates 2015 AFFH Rule (July 23, 2020).

<sup>451</sup> Ray Sin & Maria Krysan, *What Is Racial Residential Integration? A Research Synthesis, 1950-2013*, 1 *SOCIO. RACE & ETHNICITY* 468, 472 (2015).

<sup>452</sup> See, e.g., Robert J. Byers, *HUD Spells Change Section 8 Housing Alters Neighborhoods Two-Hearted Town*, CHARLESTON GAZETTE-MAIL, Jan. 30, 1995, at 1C; see also, e.g., Robert J. Byers, *Two-Hearted Town the City, Black and White Racial Lines*, CHARLESTON GAZETTE-MAIL, Jan. 31, 1995, at 1C.

<sup>453</sup> See generally *Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program*, POVERTY & RACE RSCH. ACTION COUNCIL (Aug. 2020), <https://www.prrac.org/pdf/AppendixB.pdf> (showing that, in addition to such protections for housing vouchers, customized, short-term assistance helps families seeking to move from high-poverty to low-poverty neighborhoods as well); see also Peter Bergman, Raj Chetty, Stefanie DeLuca, Nathaniel Hendren et al., *Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice* (Nat'l Bureau of Econ. Rsch., Working Paper No. 26164, 2020).

<sup>454</sup> See W. VA. CODE ANN. §§ 5-11A-1 to 5-11A-20 (West 2020).

Housing Authority's ban on unwed mothers in the 1960s,<sup>455</sup> have proliferated, particularly when it comes to criminal records and previous evictions.<sup>456</sup>

Recent federal programs that promised to increase homeownership among African Americans have more often been disguised attempts to permit real estate speculation. In both the 1970s and again in the 2000s, predatory lenders, including well-known "reputable" financial institutions, sought and manipulated applicants into mortgages they could not afford in houses that were not fit for habitation.<sup>457</sup> Some firms specialized in finding applicants who would default as quickly as possible, repeating the process with another doomed mortgagor in the same property.<sup>458</sup> Widespread fraud and a more complex economic context have kept such programs from having similar effects that New Deal-era FHA financing brought white homeowners in the 1930s and post-war period.

Another proposal to correct some of the harms done by segregation is the growing movement for reparations to African Americans.<sup>459</sup> One recent hypothetical proposal for housing reparations suggests the direct purchase of homes in segregated suburban neighborhoods to African Americans at the price which their grandparents would have paid for such property.<sup>460</sup> Next to the federal homestead program, in which the Federal Government built farms and sold them on good terms to bankrupt and unemployed miners, the idea does not seem outlandish.

For any effort to repair the harms of segregation to work, myths about the role of the state in private housing will need to be overcome. After the passage of anti-discrimination laws in housing, critics began to refer to such laws pejoratively as "social engineering."<sup>461</sup> This usage betrays the ignorance of its users. As this Article shows, many white-only suburbs owe their growth to planning and support from government programs that were clearly forms of social engineering intended to exclude on racist lines. The specific history of the term also deserves examination. Charles Hamilton Houston, the architect of the NAACP's strategy to overturn "separate but equal," told his students at Howard

<sup>455</sup> See *supra* notes 200–204 and accompanying text..

<sup>456</sup> See Ann Cammett, *Confronting Race and Collateral Consequences in Public Housing*, 39 SEATTLE U. L. REV. 1123, 1125 (2015).

<sup>457</sup> See SATTER, *supra* note 16, at 340; see also TAYLOR, *supra* note 5, at 182.

<sup>458</sup> See *id.*

<sup>459</sup> See, e.g., ROY L. BROOKS, ATONEMENT AND FORGIVENESS (2004); see also, e.g., Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (July 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>; Neil Vigdor, *North Carolina City Approves Reparations for Black Residents*, N.Y. TIMES (July 16, 2020), <https://www.nytimes.com/2020/07/16/us/reparations-asheville-nc.html/>.

<sup>460</sup> ROTHSTEIN, *supra* note 3, at 202–03.

<sup>461</sup> See Olatunde C. A. Johnson, "Social Engineering" Notes on the Law and Political Economy of Integration, 40 CARDOZO L. REV. 1149, 1156 (2019).

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University that “a lawyer is either a social engineer or a parasite on society.”<sup>462</sup> When it comes to the question of bringing about real desegregation, lawyers and policymakers may do well to ask where they fit in that dichotomy.

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<sup>462</sup> Steven D. Jamar, *Charles Hamilton Houston (1895-1950)*, HOW. UNIV. SCH. L. (quoting GENNA R. MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* 71 (1983)), <http://law.howard.edu/brownat50/BrownBios/BioCharlesHHouston.html> (last visited Aug. 21, 2020).

